

A JURIDICAL INQUIRY INTO THE APPLICABILITY OF
THE 1949 PRISONERS OF WAR AND CIVILIANS CON-
VENTIONS TO THE ISRAELI/PALESTINIAN PEOPLE
COERCION SITUATION.

by

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A JURIDICAL INQUIRY
INTO THE APPLICABILITY OF THE
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PEOPLE COERCION SITUATION: A STUDY OF THE
INTERNATIONAL LAW OF WAR FOR THE PROTECTION OF WAR VICTIMS

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I. THE BASIC JURIDICAL ISSUES.

The Security Council,
Considering the urgent need to spare the civil population and the prisoners of war in the area of conflict in the Middle East of additional sufferings,
Considering that essential and inalienable human rights should be respected even during the vicissitudes of war,
Considering that all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 should be complied with by the parties involved in the conflict,
Calls upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities;
Recommends to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war, contained in the Geneva Conventions of 12 August 1949;
Requests the Secretary-General to follow the effective implementation of this resolution and to report to the Security Council.

Security Council Resolution 237 (1967), June 14, 1967¹

This Resolution of the United Nations Security Council, which was passed within a week of the cease-fire ending the June, 1967, Six-Day War, is an expression of opinion of that

Organ that the 1949 Geneva Conventions are applicable to the Middle East coercion situation. It specifically mentions two of those Conventions, the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949² (hereinafter referred to as the 1949 POW Convention) and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949³ (hereinafter referred to as the 1949 Civilians Convention) and the "Governments concerned" are called upon to respect their humanitarian principles.

Resolution 237 is, in addition, a codification of the principle that supports the international laws of war, that of balancing military necessity with humanitarian protections for war victims.⁴ This principle is the basis of the first two paragraphs which speak of sparing the civilian population and prisoners of war of additional sufferings, and respecting essential and inalienable human rights in time of war. The Resolution also reminds Israel, in the fourth paragraph, of its special obligations regarding the administration of the territories occupied during the Six-Day War and in facilitating the return of civilians who fled from their homes and lands during the hostilities.

This study is intended as a juridical inquiry into the applicability of Resolution 237 and the 1949 POW and Civilians Conventions to one aspect of the Middle East coercion situation, that of the confrontation between Israel and the Palestinian people. The bases of the study will be the provisions of

Resolution 237 and the issue to be resolved is the applicability of the 1949 Geneva Conventions to this confrontation.

It is suggested that at the time Resolution 237 was adopted by the Security Council its language was appropriate to the Middle East coercion situation. The participants were states,⁵ namely Israel and the Arab states, principally Lebanon, Syria, Jordan and Egypt, and the implementation of the humanitarian principles of the 1949 POW and Civilians Conventions was dependent on their acceptance by the Governments of those states. Repeated endorsements of this Resolution and calls upon the participants to implement the principles of the Conventions by both the Security Council and the General Assembly,⁶ are evidence that their humanitarian principles have not been applied and necessitate an inquiry into the applicability of the Conventions to the Middle East coercion situation of 1970.

Since June, 1967, the situation in the Middle East has gradually deteriorated and the establishment of a system of minimum world public order in that area appears unlikely for the foreseeable future. However, out of this deterioration two new aspects of the coercion situation have emerged which are responsible for much of the recent increase in the intensity of the hostilities and which in the future might involve even additional nation-states as direct participants in the fighting. One of these new aspects is the direct participation of the Soviet Union in the defense of Egypt

through the installation and manning of anti-aircraft missiles and the flying of air defense missions by Soviet pilots,⁷ which will not be discussed in this study. The other new aspect is the emergence of the Palestinian people as an independent participant in the continuing hostilities against Israel. It is the emergence of the Palestinian people as a separate, independent participant in the Middle East coercion situation which requires a re-examination of the applicability of the 1949 POW and Civilians Conventions to war victims of the area and with which this study is concerned.

Although various other writers have concluded that Israel has violated specific articles of the Conventions and the news media has deplored the actions of the Palestinian guerrillas in their attacks on civilian targets throughout the Middle East and Europe, the basic juridical issue of whether the 1949 Geneva Conventions are applicable in a coercion situation of international character in which one participant is a nation-state and the other is a public organization independent of any nation-state has not been thoroughly considered.

Some international writers might conclude that such an inquiry is unnecessary because the Palestinians are not a separate, independent participant in the Middle East coercion situation, but rather are controlled and directed by the Arab States. Israel, in fact, so claims.⁸ To accept such claims would indeed negate the necessity for this inquiry, since all of the principal Arab state participants are High Contracting

Parties to the 1949 Geneva Conventions.⁹ The Palestinian and Israeli war victims would be then entitled to their humanitarian protections in a derivative manner.¹⁰ However, an analysis of the Middle East coercion situation reveals that the Palestinians are not fighting on behalf of the Arab states but for themselves. Therefore, the factual basis for this legal conclusion is not supported, and if the war victims resulting from the confrontation between Israel and the Palestinian people are entitled to the humanitarian protections of the laws of war the Conventions must be applicable to a coercion situation in which one of the participants is not a nation-state.

The method of analysis utilized in this study will be first to identify the participants in the coercion situation under inquiry, which will be referred to as the Israeli/Palestinian people coercion situation. Basically, the Palestinian people will be identified as a separate, independent participant which is not fighting on behalf of the Arab states. This inquiry will identify the origins of the Palestinian people, their bases of power and their objectives in supporting this status.

Secondly, the legal status of the so-called "Occupied Territories" will be analyzed to determine Israel's rights to exercise de jure sovereignty in those areas. This inquiry is necessitated because of a Zionist claim that Israel has greater rights of sovereignty than any other state in these areas¹¹ and is relevant to any determination of Israel's

obligation to apply the humanitarian protections of the 1949 Civilian Conventions to the inhabitants of those territories. That obligation is based, first, on a determination of Israel's status under international law within the territories, and, second, on a determination of the specific applicability of the 1949 Civilian Convention to the war victims depending on their geographic location. In both of these first two sections of inquiry, Zionism is extremely relevant and will be identified and discussed.

Once these juridical and factual issues are resolved the 1949 POW and Civilian Conventions, themselves, will be analyzed and discussed. This aspect of the inquiry is perhaps the most critical in this study since neither Convention was designed to apply to the type of coercion situation that has emerged. Both were designed to apply in international coercion situations between states and any juridical inquiry must evaluate their applicability in terms of their general purpose and giving effect to that purpose. In this inquiry the character of the coercion situation as either international or internal, and the legal status of the occupied territories is relevant, since the Conventions do not apply, except for a single Article, to internal coercion situations or civil wars.

When the applicability of the Conventions is considered a two step juridical inquiry must be made and will be utilized in this study. The first step is to determine if the Conventions are applicable to the Israeli/Palestinian people

coercion situation under the provisions of Article 2 and the failure of both participants, Israel and the Palestinian people, to accept and apply the protections of the Conventions is relevant to this determination. Then, the specific individuals entitled to either the status of a prisoner of war or a protected person must be determined under the provisions of Article 4 of each Convention. Neither of these inquiries can necessarily be completely separated from the other, but both Articles must be satisfied before the humanitarian protections of either Convention are available to war victims.

Finally, the results of the inquiry will be appraised and recommendations for future international action recommended, with a view towards insuring that the humanitarian protections of the 1949 POW Convention and Civilians Convention be extended to all war victims in the Israeli/Palestinian people coercion situation. This final appraisal of the study is perhaps the most relevant in that to conclude certain individuals are entitled to the humanitarian protections of the Conventions without recommendations for the implementation of those protections would be meaningless.

It is also intended that this study will have relevance to future coercion situations that may emerge which will be similar to the one under inquiry. This is the reason the Israeli claim that the Palestinian people are not a separate, independent participant in the total Middle East coercion

situation has not been accepted by this writer, and the humanitarian protections of the 1949 Geneva Conventions extended to them in a derivative manner through the Arab states. This would be a simple solution to a difficult problem since all of the Arab states are parties to the Conventions, but might only forestall the necessity for such an inquiry to a later date.

It would then have to be made, for example, if the population of South-West Africa, tiring of the policy of apartheid, rose up in revolt against the authority of the Union of South Africa in an attempt to gain independence. Since the revolting population initially would be neither a state or a party to the 1949 Geneva Conventions, the resulting coercion situation would have to be analyzed to determine if the Conventions would be applicable. Rather than wait for such an event in South-West Africa or elsewhere, it is appropriate to make the juridical inquiry now in the case of the Israeli/Palestinian people coercion situation.

In any inquiry of this nature, the writer is always open to criticism that he is either pro-Arab or pro-Israeli. It is impossible to make such an inquiry without discussing certain claims and facts which lend support to such criticism. However, it is not the purpose of this study to support or condemn either belligerent in the coercion situation under inquiry but rather to determine if the war victims resulting from the hostilities are entitled to the protections of the

1949 POW and Civilians Conventions. Thus, this study should be read as an effort at a juridical inquiry into the humanitarian protections to which these individuals are entitled as the first step towards the establishment of a system of minimum world public order in the Middle East.

What is involved is a determination of whether the humanitarian provisions of the international laws of war, as contained in the 1949 POW and Civilians Conventions, are applicable to a coercion situation apparently not contemplated by the drafters of those Conventions. This determination must be based on an interpretation and application of those Conventions, and the laws of war generally, in an effort to give effect to their purposes. Thus, an interpretation must be made which will give the maximum protection to all war victims, including civilian persons and prisoners of war, resulting from the Israeli/Palestinian people coercion situation and future coercion situations of a similar character.

II. AN EXAMINATION OF THE PALESTINIAN PEOPLE AS A PARTICIPANT IN THE MIDDLE EAST COERCION SITUATION: THE EMERGENCE OF A NEW ENTITY IN THE CONFRONTATION.

May observers view the Middle East coercion situation as a confrontation between Israel and the Arab states and fail to recognize the existence of the Palestinian people as a separate, independent participant in the continuing hostilities. This section will consist of a factual analysis of the Palestinian people, identifying the origin, bases of power, influence and objectives of that entity to determine if it must be considered as a separate participant in a juridical analysis of the laws of war applicable to the present confrontation.

Basically, the thesis will be developed that the Palestinian people are not fighting on behalf of any of the Arab states but for themselves, are not under the effective control of any of the Arab states and have different objectives from the Arab states, and accordingly must be considered as a separate participant in the confrontation with Israel. This separate status, although the central factual issue in this study, is also the most important factor in resolving the Middle East coercion situation and developing a system of minimum world public order in that area. The destiny of all the states involved in the present confrontation may well be controlled in the future by the power, influence and objectives of the Palestinian people. It is for all of these reasons that an examination of this entity is relevant to any study of the

Middle East coercion situation.

A. THE CREATION OF THE ENTITY IDENTIFIED AS THE
PALESTINIAN PEOPLE (1896-1967).

The term "Palestinian people" by itself is ambiguous and to understand the composition of this entity and to identify its members, a brief survey of the Middle East coercion situation is necessary. If one is to be completely accurate the Palestinian people would include both Jewish and non-Jewish Palestinians but as the term will be used in this study it will not include the Jewish people who reside in the area known as Palestine. Only the non-Jewish Palestinians, Christians and Muslims, will be considered as true members of the entity identified as the Palestinian people.

Although there has been a Palestine since Biblical times, modern Palestine did not emerge until after World War I. Its territory was part of the Ottoman Empire which after the war was divided among the Allies under a series of mandates. Modern Palestine became a separate entity in 1920 when Great Britain was named the mandatory power over its territory by the Allied Supreme Council on April 25th and later formally confirmed as the mandatory power by the Council of the League of Nations on July 22, 1922.¹²

At the time Great Britain was formally confirmed as the mandatory power there were 752,048 people in Palestine out of which 83,790 were Jewish.¹³ Thus, the non-Jewish Palestinians

were a distinct majority of the population and should have played a dominant role in the development of Palestine into an independent state as contemplated by the mandate system.¹⁴ However, this was not to be the case as evidenced by certain subsequent events.

When Great Britain assumed the duties as the mandatory power over Palestine one of the first official actions taken was to allow Jewish immigrants to enter that territory¹⁵ and become citizens of the state.¹⁶ This immigration was not accidental but the first step in the fulfillment of a Zionist plan to establish a Jewish state in Palestine which would exclude the non-Jewish Palestinians from its territory. This plan was first announced in 1896 by Dr. Theodor Herzl in his book "Judenstaat" (The Jewish State). Dr. Herzl reasoned that because Jews were a separate nationality group they would never be assimilated into the societies of the states where they presently resided and the only solution was a Jewish state. He stated in his book:

The whole plan is in its essence perfectly simple, as it must necessarily be if it is to come within the comprehension of all. Let the sovereignty be granted us over a portion of the globe large enough to satisfy the rightful requirements of a nation; the rest we shall manage for ourselves.¹⁷

Zionism has always been a political movement concerned only with creating a non-secular Jewish state, as evidenced by its founder Dr. Herzl. It was formally constituted as such in 1897 when the first Zionist Congress met and created the Zionist

Organization, whose purpose was to establish a Jewish state in Palestine.¹⁸ However, the Basle Declaration, adopted at the Congress, preferred to refer to a home instead of a state, and provided in part, "(t)he aim of Zionism is to create for the Jewish people a home in Palestine secured by public law."¹⁹ However, until World War I the efforts of the Zionists to establish a national home in Palestine met with little success.

Dr. Herzl died in 1904, but the Zionist movement continued to grow, spreading throughout Europe and to the United States. When Great Britain entered World War I, the Zionists in that country were directed by Dr. Chaim Weizmann, whose stated political purpose was "...to obtain a guarantee from the Allies that, in the event of Turkey's defeat, Palestine would be recognized as a Jewish commonwealth, unrestricted to open immigration."²⁰ Great Britain and the other Allies became generally receptive to the Zionists, for it was "...believed in Great Britain that an understanding with the Zionists would produce a new ally in the form of world Jewry" which would assist the Allies in the final victory over Germany and Turkey.²¹

Dr. Weizmann's efforts on behalf of Zionism were only partially successful in obtaining this guarantee when the British government, in 1917, issued the Balfour Declaration. It provided,

His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of

this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.²²

This somewhat ambiguous pledge from the British government concerning the future of Palestine was thereafter to be incorporated into the League of Nations Mandate for Palestine²³ and become one of the claimed legal bases for the creation of the Zionist state called Israel.²⁴

However, although the Zionists and Israel claim that Dr. Herzl and the First Zionist Congress proclaimed the right of the Jewish people to their own state and that "(t)his right was recognized by the Balfour Declaration...."²⁵ it appears that the statement of the British government had no juridical value. Since Great Britain at the time the British Government issued the Balfour Declaration had no right of sovereignty over Palestine, it is clear that it could not grant or transfer such right to the Zionists or Jewish people.²⁶ It is also important to note that the Balfour Declaration speaks of a "national home" and not a state, recalling that the Zionist purpose was to create a Jewish state in Palestine and that they later claimed that the Balfour Declaration recognized their right to do so.

This claim and the plan of creating a Jewish state are, however, inherent in the objectives and nature of Zionism. If one considers Judaism basically a religion it becomes

readily apparent that not all Jews are Zionists and not all Zionists are Jews.²⁷ As expressed by Dr. Herzl and Dr. Weizmann, Zionism is basically a national movement and is considered incompatible with the religious bases of Jewry by many prominent Jews.²⁸

This difference between politics and religion was emphasized by Jacob H. Schiff, a co-head of the American Jewish Committee during World War I, when he stated,

I believe that I am not far wrong if I say that from fifty to seventy percent of the so-called Jewish Nationalists are either atheists or agnostics and that the great majority of the Jewish Nationalist leaders have absolutely no interest in the Jewish religion.²⁹

Another fault of Zionism was pointed out by Mr. Mayer Sulzberger who opposed Zionism on the ground that it constituted a denial of democracy. He defined democracy as the situation where the people who live in a country select their own rulers who shall preserve their powers. Then he argued that Zionism in Palestine would deprive the people already there of their right of self-government and impose on them the will of people from the outside who may never even see Palestine.³⁰

A further denunciation of the Zionist program for Palestine was made in 1919 and reveals even more of the nature and effects of Zionism. This denunciation was included in the recommendations of the King-Crane Commission, which was appointed by President Wilson to determine which of the Western nations should be appointed the mandatory power over Palestine.

Its report to the World War I Peace Conference, dated August 28, 1919, provided in part; "We recommend, in the fifth place, serious modification of the extreme Zionist program for Palestine of unlimited immigration of Jews, looking finally to making Palestine distinctly a Jewish State."³¹ The report went on to note that such modification was required to safeguard the rights of the non-Jewish communities in Palestine, which was provided for in the Balfour Declaration.³² This was based on the following findings of the Commission:

For "a national home for the Jewish people"³³ is not equivalent to making Palestine into a Jewish State; nor can the erection of such a Jewish State be accomplished without the gravest trespass upon the "civil and religious rights of the existing non-Jewish communities in Palestine."³⁴ The fact came out repeatedly in the Commission's conference with Jewish representatives, that the Zionists looked forward to a practically complete disposition of the present non-Jewish inhabitants of Palestine, by various forms of purchase.³⁵

As an additional warning the Commission noted that even though the Zionists proposed to purchase the land needed for their state, "(n)o British officer, consulted by the Commissioners, believes that the Zionist program could be carried out except by force of arms."³⁶

Rabbi Elmer Berger, a leading anti-Zionist Jew, has more recently described Zionism as follows:

What this Zionism is - and has been - is a movement, well organized, to persuade the world community of nations by the use of all available instruments of national policy, that all the Jews of the world voluntarily elect to possess a so-called "Jewish

nationality". Prior to 1948 and the establishment of the Zionist State of Israel, Zionism argued that this "Jewish" nationality was homeless. Jews were an unassimilable nationality group which had been and always would be plagued by anti-Semitism. The solution of this problem, according to Zionism, was for the world to recognize, in fact and in law, a nationality entity called "the Jewish people" and, in fact and in law, to give to this "homeless" nationality entity territorial rights in which this displaced nationality could be sovereign....³⁷

The importance of Zionism, as a national movement with the purpose of creating a non-secular Jewish state in Palestine and excluding all non-Jews from that state, to this study is that it has resulted in the creation of the entity known as the Palestinian people during the twenty-eight years Great Britain administered Palestine as the mandatory power.

Even though the nature of the Zionist program was recognized prior to 1920, Great Britain was named the mandatory power over Palestine and allowed mass Jewish immigration into its territory for most of the twenty-eight years the mandate was in effect. Initially there was low-level violence between the Jewish and non-Jewish people in Palestine and most of it was ignored by the world community. Then after World War II, the level of violence rapidly escalated as the prediction of the King-Crane Commission became reality and the Zionists within Palestine resorted to violence and force of arms to create the State of Israel.

This internal strife reached such proportions that on April 2, 1947, Great Britain, as the mandatory power, took the problem to the United Nations. A committee was appointed and

after an investigation issued a report on August 31, 1947. The Committee recommended unanimously that the mandate be terminated and Palestine be granted complete independence as soon as possible.³⁸ A majority of the Committee recommended the establishment of two separate states in Palestine, an Arab state and a Jewish state,³⁹ with an economic union between them, and an international trusteeship for the City of Jerusalem.⁴⁰ A minority of the Committee recommended an independent federal state composed of an Arab state and a Jewish state, with Jerusalem as its capital.⁴¹ This federal state would have a single Palestinian nationality and citizenship.⁴²

After debate, the General Assembly of the United Nations on November 29, 1947, adopted a Resolution on the Future Government of Palestine by a vote of 33 to 13, with 10 abstentions,⁴³ which basically approved the majority proposal of the Special Committee, and set up independent Arab and Jewish states and an international status for Jerusalem.⁴⁴

After the passage of the so-called Partition Plan, and its acceptance by the Zionists and its rejection by the non-Jewish people of Palestine,⁴⁵ the level of violence within Palestine increased to such an extent that on January 1, 1948, the British announced that they would terminate the mandate and withdraw all of their forces by May 15, 1948.⁴⁶ In anticipation of the British withdrawal, the Zionists proclaimed the State of Israel on May 14, 1948,⁴⁷ which was immediately

recognized by the United States⁴⁸ and two days later by the Soviet Union.⁴⁹

However, in anticipation of the creation of Israel, the Zionists engaged in a systematic terror campaign to drive the non-Jewish Palestinians from its territory as proposed in the United Nations Partition Plan. Thus, by the time that Israel was proclaimed on May 14, 1948, there were already 350,000 Arab refugees that had left its territory.⁵⁰ This fact alone is sufficient to disprove the Zionist claim that the refugees are a result of the 1948 Arab attack on Israel and that they were ordered to flee from their homes by Arab leaders to return after Israel had been destroyed.⁵¹

The facts, now available, instead support the conclusion that it was Zionist terror that created the Arab refugees that numbered 800,000 by 1949. Mr. John Davis, former Commissioner-General of UNRWA⁵² has described Zionism as a movement involved in "...the uniting of Jews of the world into a single consciousness based on nationality: a consciousness that has the attributes of a supra-national Jewish state."⁵³ Then he points out that Zionism could never have achieved this goal

...unless Palestine were a country in which the Jewish population constituted a strong majority. However, in November 1947, when the partition vote took place at the United Nations the area designated for the Jewish people was equally populated by Arabs and Jews.⁵⁴ During the fighting of 1948-49, Israel increased her land area by some thirty percent. In this enlarged area of 1949, the Arabs constituted about sixty-four percent and the Jews only thirty-six percent of the total population. At the time she declared

her statehood, Israel was confronted with a grave problem in that the Jews actually constituted a decided minority in the territory she held. Israel resolved this dilemma by forcing Arab people out of the territory and then blocking their return.⁵⁵

A significant step in this campaign was the massacre at the village of Deir Yasin in April, 1948. "Over 250 old men, women and children were deliberately butchered, stripped and mutilated or thrown into a well by men of the Zionist Irgun Zvai Leumi."⁵⁶ After the massacre "Irgun then called a press conference to announce the deed; paraded other captured Arabs through Jewish quarters of Jerusalem to be spat upon; then released them to tell their kin of the experience."⁵⁷ At the same time loudspeakers began to broadcast the message to the Arabs, "(u)nless you leave your homes the fate of Deir Yasin will be your fate."⁵⁸

Although the official Zionist organizations operating in Palestine at the time denied responsibility for the massacre at Deir Yasin, the facts appear to indicate it was just another step in the Zionist campaign to force the non-Jewish Palestinians from the territory of the proposed Zionist state. In fact, it was an important step in creating the Zionist concept of a non-secular Jewish state in Palestine and excluding from its territory all the non-Jewish Palestinians.

The object of this appalling massacre at Deir Yasin was to terrorize the Arabs of the country into fleeing from their homes, and the policy was crowned with almost complete success when nearly three quarters of a million Arabs fled from Palestine.

That this was the aim of the massacre was established by official statements of the organizations which were responsible for it, and it has been established again recently by reliable historians of the Israel Defence Army, who say that this incident resulted in the "terrified flight" of the Arabs.⁵⁹

These facts support the conclusion that even before Israel was created the Zionists had pursued a deliberate policy of excluding non-Jewish Palestinians from the territory of their proposed state in order to fulfill the Zionist Plan for a non-secular state.

After the National Council in Tel-Aviv declared Israel a state the immediate reaction of the Arab countries was an invasion of Palestine. Arab armies from Syria, Lebanon, Transjordan, Iraq and Egypt entered Palestine and started fighting an Israeli army, made up primarily of the old self-defense organization, Hagannah.⁶⁰ This phase of the military action ended in 1949 when cease-fire and armistice agreements were arranged with the various Arab states, Egypt on February 24, 1949,⁶¹ Lebanon on March 22, 1949, Jordan on April 3, 1949, and Syria on July 20, 1949.⁶²

However, by the time the last armistice agreement was signed approximately 1,000,000 non-Jewish Palestinians had been driven from the territory under Zionist control.⁶³ At the same time the Zionists had enlarged the territory under their control from 56.47 percent of Palestine, as granted in the United Nations Partition Plan, to 77.40 per cent, or over three-fourths, of the territory,⁶⁴ and after the armistice allowed

only 40,000 individuals to return to the territory under their control.⁶⁵

The remainder of Palestine was occupied by the armed forces of Transjordan, the West Bank, and Egypt, the Gaza Strip, and it was to these areas that most of the non-Jewish Palestinians fled. The significance of this flight can be seen in the following observation:

What this meant in terms of motive can be seen in the statistics that followed the Arab exodus. More than 80 per cent of the entire land area of Israel is land abandoned by the Arab refugees. Nearly a quarter of all the standing buildings in Israel had been occupied by those Arabs. Ten thousand shops, stores and other firms inside new Israel had been Arab. Half of all the citrus fruit holdings in the new State had belonged to the Arabs now made refugees.⁶⁶

These refugees and the pre-1949 inhabitants of the West Bank and the Gaza Strip are the people which will be referred to as the Palestinian people in this thesis. They are simply the non-Jewish Palestinians, who for the most part were excluded from the Zionist state of Israel in the 1948 to 1949 period. The great majority of the Palestinian people after 1949 lived outside of the area controlled by Zionist Israel but within the territory of mandatory Palestine.⁶⁷ Since after 1948 Egypt occupied and governed the Gaza Strip and Jordan the West Bank, the Palestinian people did not govern any of their territory, had no effective government and none of the attributes of statehood.⁶⁸ They were politically inert and without effective leadership,⁶⁹ and until after the Six-Day

War in June, 1967, could not be considered a participant in the Middle East coercion situation. They were a stateless people, many of them driven from their homes by Zionism, who were under the effective control of foreign states. However, the events since June 5, 1967, have dramatically changed the nature of this entity and the Palestinian people have emerged as a separate, independent participant in the Middle East coercion situation.

B. THE EMERGENCE OF THE PALESTINIAN PEOPLE AS A SEPARATE PARTICIPANT IN THE MIDDLE EAST COERCION SITUATION.

Early in the morning of June 5, 1967, Israeli armed forces invaded Egypt, Syria and Jordan, and after less than a week of fighting occupied some 43,750 square miles of additional territory.⁷⁰ Included within these occupied areas were the West Bank, the Gaza Strip and the old city of Jerusalem, which contained over one million Palestinian people.⁷¹ The Arab states' armies had been destroyed as an effective fighting force and the pledges of the Arab states' leaders to liberate Palestine from the Zionists appeared as empty promises. Out of this defeat, however, the Palestinian people have emerged as an effective, independent participant in the continuing Middle East coercion situation. The significance of the June War had been described by one writer as follows:

The most important consequence thus far of the 1967 Arab-Israeli war has been the emergence of the Palestinian resistance movement as a

major factor in the Middle East. Neither Israel, the Arab states, nor the great powers can any longer ignore its existence and significance, for it has shown that it can affect the interests, if not the destinies, of them all (T)he Palestinian partisan organizations have themselves attained a degree of political legitimacy Today the Palestinians, for better or worse, have a renewed sense of political identity and are developing effective organizations for political and military action.⁷²

The end result has been that "(t)he confrontation is no longer an Arab-Israeli confrontation; it is a confrontation between Israel and the Palestine resistance movement."⁷³

This shift in the nature of the confrontation after June, 1967, was not instantaneous but began in 1955 when Egypt organized the first guerrilla forces from the Palestinians living in Gaza and dispatched them into Israel on subversive missions.⁷⁴ Prior to June, 1967, various guerrilla organizations were founded which conducted operations against Israel but they were dependent on the Arab states and were not an independent participant in the confrontation with Israel.⁷⁵ However, since that time these Palestinian guerrilla organizations have emerged from the dominance and control of the Arab states, and have become an independent participant in the confrontation.

This independence is centered around the Palestine Liberation Organization which was established in 1964 by the Arab League with its own army, the Palestine Liberation Army, which was "...to serve as a vanguard for the liberation of the usurped part of Palestine."⁷⁶ The army was actually formed that same year in Gaza and became an integral part of the

Egyptian army command.⁷⁷

The Palestine Liberation Organization was constituted "...as the official voice of the Palestinian community ... and was given quasi-diplomatic status and financial support" by the Arab states, principally Egypt.⁷⁸ The Constitution of the Palestine Liberation Organization indicated that it was to be the representative of all the Palestinian people by providing: "All the Palestinians are natural members in the Liberation Organization exercising their duty in the liberation of their homeland in accordance with their abilities and efficiency."⁷⁹ The Constitution also established The National Assembly of the Palestine Liberation Organization⁸⁰ which was to meet every two years, rotating between Jerusalem and Gaza,⁸¹ established an Executive Committee of fifteen members⁸² and provided that the President of the Executive Committee would represent the Organization at the Arab League.⁸³

Until the Six-Day War in June, 1967, the Palestine Liberation Organization and the various Palestinian guerrilla organizations remained under the control of the Arab states but the defeat of the Arab states' armies and the Palestine Liberation Army in the conflict produced the change previously mentioned. This change took place for two reasons. First, the majority of the Palestinians had relied on the promises of the various leaders of the Arab states to liberate Palestine and the defeat suffered by the Arab armies demonstrated how empty these promises had been. It became apparent that the

Palestinians themselves would have to liberate their homeland.⁸⁴

Second, was the reason that within the territories occupied by Israel at the conclusion of the Six-Day War were over one million Palestinians who resided in Gaza and the West Bank⁸⁵ and "...who were bitterly resentful of their defeat and implacably hostile to the occupiers."⁸⁶ Many of these people were Palestinians who had been driven from the territory of Palestine that had become Israel during and after the 1948-1949 war, and who now came under Israeli control as the occupying power. It was primarily these people who felt that the Arab states could do nothing for them in the struggle to liberate Palestine from the Zionists and since Israeli forces occupied all of their land, they became resistance fighters and began their own independent struggle to liberate Palestine.

A new generation of leaders of the Palestinian people has also emerged which are disciplined and purposeful. One of the first changes these new leaders made was in the leadership of the Palestine Liberation Organization, which had been generally discredited during the June War when its inadequately armed and trained army was easily overrun by Israeli forces in the Gaza Strip. The Organization was reconstituted under the leadership of Yahya Hammudah and held a third National Assembly in July, 1968, at Cairo (because both Jerusalem and Gaza were occupied by Israel) to which many of the previously excluded guerrilla groups sent delegates.⁸⁷ This was one of the first steps in the development of the Palestine Liberation Organization as the sole

representative of the Palestinian people and as a genuine guerrilla organization with the purpose of liberating Palestine.

Additional National Assemblies have been held since July, 1968, at which the Palestine Liberation Organization has been further reorganized. At an Assembly held in February, 1969, Fatah, the oldest guerrilla organization, won control of the Organization and its leader, Yassir Arafat, was elected President of the Executive Committee.⁸⁸ At this same meeting the Popular Front for the Liberation of Palestine, which claims credit for various attacks on Israeli planes and property outside of the Middle East and on non-military targets within Israel and the occupied territories,⁸⁹ was excluded from the Organization.

Despite the exclusion of the Popular Front there has been a trend towards consolidation of the Palestinian guerrilla groups under the sponsorship of Fatah and the Palestine Liberation Organization. In April, 1969, the formation of a Palestinian Armed Struggle Command took place with the purpose of improving military co-operation among the various guerrilla forces.⁹⁰ Also as a result of the consolidation the various Arab governments have come out in support of the guerrillas' activities and have given them financing, as contrasted with the policy of restraint that existed prior to June, 1967.⁹¹

The activities of the Palestinian people have not been limited, however, to military organization but extend to other government-like functions. Palestinian schools have been

opened, a nurse corps and youth organizations have been formed,⁹² and

... the Palestinians are developing an administrative infra-structure for procurement, finance, education and welfare ...; the Palestinian Arabs hope that these quasi-governmental structures will someday comprise the nucleus of a Palestine Arab State. The Movement is generously financed, largely from Palestinians and other Arabs in the oil producing states. Arab governments finance the Palestine Liberation Organization and provide facilities in varying degrees for all the guerrilla groups.⁹³

The result of these activities is that the Palestinians assert that they are now an independent movement organized on a resistance basis, because of the Zionist occupation of Palestine, which must be considered as a separate participant from the Arab states in the Middle East coercion situation.

An examination of the relations of the Palestinian people with the various Arab states confirms this independent status. The various restrictions Lebanon and Jordan have attempted to place on the activities of the Palestinian guerrillas operating from their territory have been withdrawn or modified after the guerrillas refused to obey them.⁹⁴ This has caused one writer to observe:

In the Arab setting, at least since June, 1967, it is not even clear that the Arab governments have much leverage over the activities of the principal liberation groups within their territory. These groups concurrently enjoy such strong popular backing that some Arab governments (most obviously Jordan) would risk their stability and jeopardize their popular backing if deliberate and overt measures to control a liberation movement were undertaken as official policy.⁹⁵

Recent events in both Jordan and Lebanon give support to this observation and clearly demonstrate the control the Palestinians have over the governments of those states.

However, Jordan and Lebanon are not the only Arab states that have recognized the independence of the Palestinian people. At a meeting of the Arab Defense Council in Cairo on November 8, 1969, the status of the Palestine Liberation Organization was recognized as being one of equality with the thirteen Arab states attending the meeting. The organization had representatives at the meeting who spoke to the foreign ministers, defense ministers and defense commanders who were present, and who apparently participated on an equal basis with the representatives of the Arab states.⁹⁶ Since the meeting was called for the purpose of co-ordinating military action against Israel by a joint military command,⁹⁷ the inclusion of the Palestine Liberation Organization for such purpose is further recognition of the independent status the Palestinian people have gained since the Six-Day War. This recognition of the Palestine Liberation Organization was also included in the final resolutions of the meeting which gave full support to the Organization and which called for an Arab Summit Conference at Rabat, Morocco, on December 29, 1969, to which the Organization was invited.⁹⁸

These facts demonstrate that since the Six-Day War in June, 1967, the Palestinian people have organized themselves into various guerrilla organizations under the umbrella of the

Palestine Liberation Organization and have become an independent participant in the Middle East coercion situation. Their strength and influence over the destiny of the confrontation with Israel is recognized by the other Arabs when "(m)ajor Arab leaders, including President Nasser of Egypt, ... (say) they will enter into no peace settlements not subscribed to by the Palestinians."⁹⁹ This position of the Arab leaders is simply an acknowledgement of the fact that the Palestinians have become powerful enough militarily to continue their guerrilla activities against Israel in the event a peace settlement negotiated by the Arab states did not meet their approval. However, although a major factor, the military power of the Palestinian people is not the sole factor in recognizing them as a separate participant in the confrontation with Israel.

C. A COMPARISON OF THE OBJECTIVES OF THE PALESTINIAN PEOPLE AND THE ARAB STATES.

A real distinction exists today between the objectives, in the confrontation with Israel, of the Palestinian people expressed by the Palestine Liberation Organization and its member organizations, and the Arab states. It is for this reason, when coupled with their effective military and political power, that the Palestinian people must be considered a separate participant in the Middle East coercion situation and cannot be considered as fighting on behalf of one or more of the Arab state participants.

Although the Arab states at one time threatened and vowed to destroy Israel as a state, apparently the lessons learned from three wars have forced them to alter their original objectives. A determination to destroy Israel is still spoken about by some Arab leaders but the present objectives of the Arab states are the return of all the territory occupied by Israel during the Six-Day War and a solution to the Palestinian refugee problem, by either allowing the refugees to return to their former homes or be paid compensation for their properties.¹⁰⁰

President Nasser has clearly endorsed such objectives as the policy of his government by indicating that he accepts the United Nations Security Council Resolution of November 22, 1967,¹⁰¹ as the basis for a settlement of the coercion situation and has denied he ever stated he intended to "throw Israel into the sea." He has pointed out, however, that the deprivation of the Palestinians of their land and homes is the real problem in the Middle East which must be solved before peace can come,¹⁰² thus highlighting the status and importance of the Palestinian people.

The United Nations Resolution referred to by President Nasser as the basis of a settlement of the Middle East coercion situation provides in part:

The Security Council,

. . . .

1. Affirms that the fulfillment of Charter principles

requires the establishment of a just and lasting peace in the Middle East which should include the application of both of the following principles:

- (i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. Affirms further the necessity

- (a) For guaranteeing freedom of navigation through international waterways in the area;
- (b) For achieving a just settlement of the refugee problem;
- (c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;¹⁰³

By accepting this Resolution as the basis for peace, President Nasser and the other Arab leaders¹⁰⁴ have by implication indicated that they are willing to recognize the existence of Israel as a state rather than continue to claim the existence of a Palestinian state. They also have indicated their willingness to end the state of belligerency that has existed between the Arab states and Israel since 1948. These concessions would of course be in exchange for Israel's withdrawal from all the occupied territories and a "solution" to the refugee problem but effectively would recognize that Palestine no longer exists and would not be constituted as a state in the territory now claimed by Israel.

These objectives are in direct conflict with those of the Palestinian people and the Palestine Liberation Organization

which center around the creation of a Palestinian state, where both Arabs and Jews can live together,¹⁰⁵ and the elimination of the Zionist state of Israel. To fully understand the objectives of the Palestinian people, one must consider how they view the present confrontation with Israel.

As the Palestinians see it, the issue can be simplified as follows: twenty years ago there was a country called Palestine in which Jews and Arabs - all Palestinians - lived together. The proportion of the population was one-third Jewish and two-thirds Arab. What happened in 1948-49 was the well-armed, well-organized Jewish minority physically and literally chased out the Arab majority beyond the borders of that country. The majority became refugees and the minority became the State of Israel. The majority wants nothing more than to return to its country, to its home, to its lands and practice the right of self-determination. This is the simple and total case of the Palestinians.¹⁰⁶

This position of the Palestinian people has been incorporated into the basic objective of Fatah which has always been "...the liberation of all of Palestine from Zionist political control."¹⁰⁷ In explaining their objective the Palestinians have stated it is "...limited to the destruction of the political structure of the state (Israel) and not the people ... (since the) fight is against Zionism as a political movement and not against the Jewish people."¹⁰⁸ The end result to be achieved is "(a) democratic Palestine where Arabs and Jews enjoy equal rights and opportunities..." which would replace the Zionist state of Israel.¹⁰⁹ In the new Palestine Jews would have religious freedom but "...would have to accept the return of all the exiled Palestinian Arabs, to undergo common hardships in the massive relocation, and to live

peacefully with them."¹¹⁰

In analyzing these objectives of the Palestinian people it is necessary to understand that their implementation would require the destruction of the basic institutions of the State of Israel and of the state itself, since the entire basis of that state is Zionism. This result would be directly contra to President Nasser's acceptance of the United Nations Resolution which would require recognition of Israel and its right to a continued existence as part of the peace formula.

Thus by comparing the objectives of the Arab states and the Palestinian people, a basic conflict is revealed that at times strains the relationship between the so-called "allies". The Arab states, principally Egypt and Jordan, are clearly interested in a diplomatic settlement of the coercion situation,¹¹¹ involving basically a return of the territory lost in the Six-Day War, while at the same time insisting on a solution to the refugee problem.¹¹² The Palestinian people, on the other hand, seek the elimination of the Zionist state of Israel and in its place the establishment of a Palestinian state to which all Palestinians can return.

D. CONCLUDING APPRAISAL OF THE STATUS OF THE PALESTINIAN PEOPLE.

The entity hereinafter referred to as the "Palestinian people" is, therefore, a creation of Zionism. When the Zionist

program of creating an independent Jewish state and excluding non-Jews from its territory was implemented, the initial result was approximately 800,000 unorganized refugees. They fled to the neighboring Arab states and the remaining territory of Palestine occupied by Jordan and Egypt, and lived there with other Palestinians under the control of other states. The Palestinian people had been created as an entity but it was not until the June, 1967, Six-Day War, when Israeli armed forces occupied the remainder of Palestine, that the nature of the Arab-Israeli confrontation changed and the Palestinian people emerged from years of foreign domination.

Since this change in the nature of the Middle East coercion situation, if one considers the independent power and influence of the Palestinian people and their differing objectives from the Arab states, the only reasonable conclusion that can be drawn is that they are an independent participant in the confrontation with Israel. The basic differences between the objectives of the Palestinian people and the Arab States in this confrontation alone are sufficient to require recognition of this independent status, but when considered along with their relative military and political power such independent status is without issue. These factors have led to the following observation: "Today, the conflict has reassumed its true colors. The conflict is between Israel-Zionism-and the Palestinians - people whom Israel and Zionism have driven out of their homes."¹¹³

Accordingly, when the applicability of the 1949 Prisoners

of War and Civilians Conventions to this conflict are considered the Palestinian people must be considered as separate participants who are not fighting on behalf of any of the Arab states but for themselves to achieve their own objectives. Therefore, if they are entitled to the protections of these Conventions, it must be in their own right and not because of protection derived through the various Arab states who are also parties to the conflict and High Contracting Parties to the Conventions.

III. THE LEGAL STATUS UNDER PUBLIC INTERNATIONAL LAW OF THE WEST BANK, THE GAZA STRIP AND THE OLD CITY OF JERUSALEM.

This section will be a juridical analysis of the right of Israel to exercise de jure sovereignty over the territory of the West Bank, the Gaza Strip and the old city of Jerusalem, which were occupied in 1967. At the same time, the international boundaries, or the territory over which Israel is the de jure sovereign, will also be considered. In making this determination, the legal status of these areas under public international law must be analyzed, as well as the effect various occupations by Arab and Israeli armed forces have had on that status. Therefore, the analysis of this section will consider the United Nations Partition Resolution, the Israeli, Jordanian and Egyptian occupations of 1948-1949, the Israeli occupation of 1967, and the actions taken during the various occupations by the occupying powers.

Israel's right of de jure sovereignty has been asserted by the Zionists and is relevant to a determination of the laws of war that are applicable within the territories in question. This right of de jure sovereignty must be contrasted with the right of de facto sovereignty which normally follows an occupation or conquest by military forces and under which the occupying or conquering state does not normally acquire the reversionary right of sovereignty which remains in the former

sovereign of the occupied territory.¹¹⁴

Although Israeli forces also occupy the Golan Heights and Siani, this section will not consider the legal status of those areas since it is clear to this writer that Syria and Egypt, respectfully, are the de jure sovereigns in these areas. Israel is at most a belligerent occupant in these areas and accordingly, the inquiry of this section will be directed at the legal status of the other areas under Israeli occupation since June, 1967.

A. THE CONTINUING EFFECT OF THE UNITED NATIONS
PARTITION RESOLUTION ON THE LEGAL STATUS OF THE
"OCCUPIED TERRITORIES".

The United Nations Partition Resolution of November 29, 1947 provided in part:

3. Independent Arab and Jewish States and the Special International Regime for the City of Jerusalem ..., shall come into existence in Palestine two months after the evacuation of the armed forces of the mandatory Power has been completed but in any case not later than 1 October 1948.¹¹⁵

At the time this resolution was passed the West Bank, the Gaza Strip and the old city of Jerusalem were all part of Palestine under the mandate and thus their future status was to be determined by the provisions of the Partition Plan. Since the population of the West Bank and the Gaza Strip was predominately Arab or non-Jewish,¹¹⁶ these territories were included within

the boundaries of the proposed Arab state under the Plan.¹¹⁷ Jerusalem, because it contains the holy places of three of the world's religions, Christianity, Judaism and Muslimism, was treated separately and a special international trusteeship was proposed for its territory.¹¹⁸

Thus, on or before October 1, 1948, the Partition Resolution contemplated the establishment of an Arab state within part of the territory of Palestine and the creation of an international status for all of Jerusalem. However, these provisions of the Partition Plan never became a reality because of the hostilities that took place in Palestine following the creation of Israel by the Zionists on May 14, 1948.

When Israel was proclaimed by the Zionists they relied on the United Nations Partition Plan as one of the legal bases for their state. The State of Israel Proclamation of Independence provides in part:

On the 29th November, 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish State in Eretz-Israel; the General Assembly required the inhabitants of Eretz - Israel to take such steps as were necessary on their part for the implementation of that resolution. This recognition by the United Nations of the right of the Jewish people to establish their State is irrevocable.¹¹⁹

At the same time the Zionists relied on the Balfour Declaration and the League of Nations Mandate for Palestine as additional legal bases for the establishment of Israel,¹²⁰ but the

Partition Resolution was the only real action by the International Community that specifically provided for the creation of a Jewish state in Palestine.¹²¹

Since 1949, when the hostilities ended for the first time, the Zionists have continued to rely on the Partition Resolution as one of the legal bases for Israel but have denied that the Palestinian people have any legal basis for their own state. It follows that if the right of the Zionists to establish Israel is "irrevocable" so is the right of the Palestinian people to establish an Arab state. The Zionists, however, can not admit that the Palestinian people have this right for such an admission would contradict their claims regarding the boundaries of Israel.

When the hostilities ended in 1949 the Zionists had increased the territory under their control from 56.47 per cent of Palestine, as included within the proposed Jewish state by the Partition Resolution, to 77.40 per cent.¹²² Since 1949 Israel has claimed that all of this territory is within the international boundaries of Israel even through the Partition Resolution provided otherwise. Then, after the 1967 Six-Day War, some Zionists have even claimed that over the West Bank, the Gaza Strip and the old city of Jerusalem, Israel has the greatest right of sovereignty.¹²³

These claims are inconsistent with the provisions of the Partition Resolution which included the excessive territories occupied by the Zionists in 1948-1949, and the West Bank and

the Gaza Strip within the proposed Arab State.¹²⁴ Jerusalem, both the old and new cities, was to have a special international status.¹²⁵ Therefore, when the Zionists continue to rely on the Partition Resolution as one of the legal bases of Israel they also admit to certain territorial limits of that state. The Partition Plan's territorial limits for the Jewish state specifically excluded the territory occupied by the Zionists in 1967 and Israel itself has pointed out that the rights guaranteed under that Plan are "irrevocable".

B. THE ZIONIST OCCUPATION IN 1948-1949 OF TERRITORIES
IN EXCESS OF THOSE INCLUDED WITHIN THE JEWISH STATE
UNDER THE UNITED NATIONS PARTITION RESOLUTION.

If Israel's right of de jure sovereignty is recognized over the territory of Palestine included within the Jewish state by the United Nations Partition Resolution, the issue still remains as to whether it acquired de jure sovereignty over the territory occupied in excess of the Resolution in 1948-1949. Israel presently claims that the armistice lines provided in the 1949 Armistice Agreements constitute its international boundaries although those agreements provided otherwise.¹²⁶ Since the sovereignty over these territories was to be in an Arab state under the Partition Plan, Israel's only claim to de jure sovereignty must be based on general principles of international law.

Traditional international law provided for various methods

in which de jure sovereignty may be acquired over territory, including occupation and conquest followed by subjugation.

Occupation is the act of appropriation by a State through which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another State. Occupation as a mode of acquisition differs from subjugation chiefly in that the subjugated territory previously belonged to another State.¹²⁷

The essential factor in acquiring sovereignty through occupation is that the land must belong to no state to be subject to occupation,¹²⁸ although territory that at one time belonged to a state but which has been abandoned, can be subject to occupation.¹²⁹ "(O)ccupation is effected through taking possession of, and establishing an administration over, the territory in the name of, and for, the acquiring State."¹³⁰

Occupation, under traditional international law, does not normally occur during a coercion situation but there are no international law rules preventing such.¹³¹ Thus in the case of the territory in question the basic issue is whether it belonged to no state and was therefore subject to occupation when it came under Israeli control in 1948 and 1949. In this regard the reasons behind the failure of the Arab state, proposed under the Partition Resolution, to come into existence must be considered.

There are basically two reasons why the Arab state never became a reality: first, the Arab leaders in Palestine refused to agree to partition and the implementation of the

Partition Plan; and second, the Zionists, through their terror campaign, drove most of the Palestinian people from the territory under consideration, as well as from the territory of the proposed Jewish state.¹³² The issue to be resolved is whether these factors rendered the territory of Palestine subject to occupation.

Prior to May 15, 1948, Palestine was clearly not an independent state but still had many of the attributes of a state.¹³³ There is, however, no agreement among international lawyers as to the status of territory under a mandate in regards sovereignty.¹³⁴ The only real conclusion that can be drawn is that some entity exercised sovereignty over Palestine during the mandate and that its territory was not subject to occupation by any state with such intentions.¹³⁵

There appears to be no reason that this situation should have changed in regard to Palestine after May 14, 1948, when the British withdrew as the mandatory power and the State of Israel was proclaimed. The fact that the Arab leaders refused to accept partition or put into effect the Partition Plan is not considered controlling over the issue of sovereignty of the territory of Palestine. The only practical effect of their lack of action is that an Arab state did not emerge that could assume de jure sovereignty over its proposed territory from whatever entity had de jure sovereignty up to May 14, 1948.

Since it must be concluded that some entity exercised sovereignty over the territory in question after May 14, 1948,

the second issue to be resolved is whether that entity abandoned the territory so that it became subject to occupation by Israel.¹³⁶ This issue can be answered if the Zionist terror campaign is considered since the territory was not abandoned by its occupants, the Palestinian people, but they were forced to leave by the Zionists. Clearly the territory was not abandoned but rather conquered by military force. Accordingly, the conclusion must be reached that Israel did not acquire the rights of de jure sovereignty over the territory that came under its control in 1948 and 1949 in excess of that allotted to the Jewish state under the Partition Resolution on the basis of occupation, because this territory was not subject to occupation.

This conclusion still leaves unanswered the question of whether Israel acquired de jure sovereignty over the territory through conquest and subsequent subjugation.

Conquest is the taking possession of enemy territory through military force in time of war. Conquest alone does not ipso facto make the conquering State the sovereign of the conquered territory, Conquest is only a mode of acquisition if the conqueror, after having firmly established the conquest, formally annexes the territory. Such annexation makes the enemy State cease to exist, and thereby brings the war to an end. And as such ending of war is named subjugation, it is conquest followed by subjugation, and not conquest alone, which gives a title, and is a mode of acquiring territory.¹³⁷

Conquest, under traditional international law, therefore consisted of "...the definitive and unambiguous appropriation of all or part of the territory of the defeated belligerent

which frequently had previously been under belligerent or military occupation."¹³⁸ Since Israel was engaged in a war, or international coercion situation, immediately after the state was established, and conquered the territory in question during that war, it must be decided if it became the de jure sovereign through conquest and subjugation.

There are some international writers who conclude that conquest and subjugation are still a proper method of acquiring territory provided the war is legal under international law.¹³⁹ Other international writers have argued that de jure sovereignty can no longer be acquired in this manner.¹⁴⁰ However, there is general agreement that title, or de jure sovereignty, can not be acquired in this manner until there is a treaty of peace or a complete cessation of hostilities.¹⁴¹ Until such time the annexation or subjugation of conquered territories by a belligerent occupant is prohibited.¹⁴²

Thus, in the case of Israel, de jure sovereignty has not been acquired over the territory in question because there has never been a treaty of peace or a complete cessation of hostilities. The 1948-1949 hostilities were temporarily suspended by Armistice Agreements which provided that territorial issues were not to be resolved by their terms¹⁴³ and there is general agreement among international writers that an armistice agreement does not end the state of war but merely temporarily suspends the hostilities.¹⁴⁴ Accordingly, any territory occupied by the belligerents is not subject to

subjugation under the accepted principles of international law upon the conclusion of an armistice and de jure sovereignty remains where it was before the hostilities began.

Before concluding absolutely that Israel has never acquired de jure sovereignty over the territory it occupied, in excess of that included within the Jewish state, during the 1948-1949 hostilities, brief mention should be made of the effect of the exercise of de facto sovereignty for extended periods of time. The issue to be resolved is whether Israel's exercise of de facto sovereignty since 1949 has ripened into de jure sovereignty because

(t)he actual exercise of territorial jurisdiction tends to create a presumption in favor of the right to exercise such jurisdiction. If such a de facto exercise of jurisdiction is continuous and, in relation to other states, peaceful, that is to say, not contested, such a position is "as good as a title".¹⁴⁵

When this issue is considered any conclusions that are reached must be based on the attitude of the international community concerning Israel's boundaries. Since the Arab states have never recognized Israel as a state,¹⁴⁶ it is clear that they have not recognized Israeli sovereignty over any of the territory presently under Zionist control. Thus, the attitude of the other states comprising the world community is relevant.

There has never been a formal international agreement on the international boundaries of Israel, although Israel has

been a member of the United Nations since May 11, 1949,¹⁴⁷ and has, therefore, been recognized as a state since at least that date.¹⁴⁸ However, it can be said that the international community has informally recognized Israeli sovereignty over those territories occupied by the Israelis from 1949 to 1967 on the basis of recent United Nations Resolutions regarding the withdrawal from those territories occupied in 1967. All of these resolutions have called for Israel to withdraw to its pre-1967 boundaries¹⁴⁹ and can therefore be considered an international recognition of those boundaries as the territorial limits of Israel. In fact, except for the attitude of the Arab states, most of the international community presently considers the 1949 armistice lines as the boundaries of Israel even though the Armistice Agreements and international law do not constitute them as such. Thus, Israeli exercise of de facto sovereignty for twenty-one years may well have given rise to de jure sovereignty over the territory in question.

The issue of Israel's de jure sovereignty over this territory will not be settled completely until a peace treaty is concluded with the Arab states. Since all of the adjacent Arab states except Syria have agreed to accept the Security Council Resolution of November 22, 1967, as a basis for such a peace treaty,¹⁵⁰ and that Resolution provides for Israel to withdraw only from the territory occupied in 1967 and for recognized boundaries,¹⁵¹ it appears that even the Arab states are prepared to recognize that Israel has de jure sovereignty

over the territory occupied in 1948-1949 in excess of that included within the Jewish state under the Partition Plan. However, this issue can not be settled until a general peace settlement is concluded for the entire Middle East and until such occurs, the territorial limits of Israeli de jure sovereignty prior to June, 1967, will be uncertain.

C. JORDAN'S OCCUPATION AND SUBSEQUENT ANNEXATION
IN 1948-1949 OF THE WEST BANK AND THE OLD CITY
OF JERUSALEM.

Even before the hostilities that followed the establishment of the State of Israel ended upon the conclusion of the armistice agreements between Israel and the Arab states in 1949,¹⁵² Transjordan's leader, King Abdullah, in December, 1948, took steps to annex the areas of Palestine then occupied by his army. These areas are those territories referred to as the West Bank and the old city of Jerusalem and their annexation preceded the changing of the name of the state from Transjordan to Jordan on April 26, 1949.¹⁵³

The Zionists now contend that Jordan never acquired the rights of a legitimate sovereign, or de jure sovereignty, under international law, over those areas of mandatory Palestine that came under its control during the 1948-1949 hostilities¹⁵⁴ because Jordan's invasion of Palestine on May 15, 1948, constituted a use of force in violation of

Article 2, paragraph 4 of the United Nations Charter.¹⁵⁵

Paragraph 4 of Article 2 provides:

4. All members (of the United Nations) shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.¹⁵⁶

This provision, according to the Zionists, prevented Jordan from acquiring sovereignty over the West Bank and the old city of Jerusalem because the present international law rule is that a state does not acquire title to any territory conquered through the illegal use of force¹⁵⁷ and accordingly Jordan was at most a belligerent occupant.¹⁵⁸ This conclusion is supported by the facts that, according to the Zionists, only Britain and Pakistan recognized the annexation, and the Council of the Arab League declared it void and that Jordan was merely holding the territories in trust for the Palestinian people.¹⁵⁹ In making this argument, the Zionists never reach the issue previously discussed that a state does not acquire sovereignty over conquered territory until there is a treaty of peace or a general cessation of hostilities,¹⁶⁰ and therefore avoid bringing into issue Israel's right of sovereignty over the territory conquered in 1948-1949.

This argument on the part of the Zionists is part of their claim to a right of sovereignty over the West Bank and the old city of Jerusalem which will be examined later. However, before examining the Zionists/Israeli right of sovereignty, Jordan's

rights will first be discussed, as will Egypt's rights in connection with the Gaza Strip.

The Zionists are correct that a conquest of territory in violation of Article 2, paragraph 4 of the United Nations Charter no longer gives rise to a right of de jure sovereignty over the conquered territory. However, this has not always been true under the rules of international law. At one time title by conquest was recognized as a necessary right of a state to wage war to either enforce the law or change existing legal rights. Since the League of Nations Covenant, the General Treaty for the Renunciation of War and the United Nations Charter, prohibit war, most international writers now agree that a state no longer acquires title through conquest when it resorts to war in violation of international law.¹⁶¹ In this regard Messrs. McDougal and Feliciano have written in Law and Minimum World Public Order:

Traditional international law, that is, law before its incorporation of the principle of minimum order and the distinction between lawful and unlawful resort to coercion, recognized military conquest as a legitimate mode of changing a prevailing distribution of power and other values among nations. With the establishment of this principle and distinction, there appears cogent reason for urging that conquest may no longer be regarded as a permissible mode of acquiring "title" or "sovereignty"....¹⁶²

This conclusion is reached because Article 10 of the League of Nations Covenant prohibited, and Article 2, paragraph 3 of the United Nations Charter prohibits, war as an instrument of national policy.¹⁶³ Coercion, as a method of conducting

international relations, is forbidden and only peaceful methods are authorized to settle international disputes.¹⁶⁴ Thus, the Zionists argue that because Jordan's invasion of the West Bank and the old city of Jerusalem on May 15, 1948, was in violation of the United Nations Charter, it never acquired de jure sovereignty over this territory when it was subsequently annexed.

This argument raises three issues that must be examined in determining Jordan's rights in regard to these territories. First, was Jordan bound in 1948 by the provisions of the United Nations Charter? Second, if Jordan was so bound did its coercive actions come within any of the recognized exceptions to the Charter? Third, if Jordan's coercive actions in May, 1948, were illegal, what was the effect of the methods used to annex the territory in question?

Judge Lauterpacht, in 1952 limited the effect of the United Nations Charter when he wrote:

...title by conquest remains a valid title in those cases in which the conquering State is not bound by the Charter of the United Nations or by the General Treaty for the Renunciation of War or when, although so bound, the resort to war on its part is not, in the particular case, unlawful.¹⁶⁵

Evidently he had concluded that the United Nations Charter in 1952 was binding only on the member-states and did not constitute customary international law. Therefore, since Transjordan was not a member of the United Nations until 1955¹⁶⁶ some might argue it was not bound by the Charter in May, 1948, and the

possibility exists that it could have acquired title by conquest and subsequent annexation over the West Bank and the old city of Jerusalem.

Considerable disagreement with this conclusion can be expected from many international writers especially since the Nurnberg Trials following World War II established the principle that war for aggressive purposes is illegal.¹⁶⁷ However, as late as 1952 it can be said that there were differences of opinion on the results of coercion as affecting sovereignty over conquered territory.

The second issue raised by the Zionist argument is whether Transjordan's invasion of Palestine in May, 1948, was an act of self-defense if it was bound by the United Nations Charter. Self-defense, and coercion for that purpose, is specifically authorized by Article 51 of the United Nations Charter, which provides in part: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations."¹⁶⁸ This Article is considered a general statement which preserves the inherent right of self-defense¹⁶⁹ and specifically authorizes "collective" self-defense.

Jordan's invasion of Palestine, as well as the other Arab states invasions, has been labeled as collective action on the part of the Arab states in defense of the rights of the Palestinian people.¹⁷⁰ In considering the validity of this claim under Article 51 of the Charter, the terror campaign

waged by the Zionists in 1948-1949 against the Palestinian people must be considered. The success of that campaign has already been discussed and a reasonable conclusion can be reached that if it were not for the actions of the Arab states, including Transjordan, the Zionists would have conquered all of mandatory Palestine and completely excluded the Palestinian people.

Another factor that must be considered is the Zionist claim to all of the territory of mandatory Palestine and the territory of Transjordan as it existed in 1949, for their Jewish state. This claim was re-emphasized before the United Nations in 1947, when the Palestine issue was being considered, in the statements of the representatives of the Jewish Agency before the Ad Hoc Committee on the Palestinian Question. Dr. Weizmann argued that the League of Nations Mandate for Palestine had provided for the creation of a Jewish state with territory eight times what was provided for in the proposed Partition Plan.¹⁷¹ Dr. Silver, who represented the Jewish Agency for Palestine, said, in arguing for a Jewish state:

According to Mr. Lloyd George, who had been Prime Minister at the time, the Balfour Declaration implied that the whole of Palestine, including Transjordan, should ultimately become a Jewish State.¹⁷²

These statements were consistent with the territorial claims that had been made by the Zionists for some time and must be considered in evaluating Jordan's actions.¹⁷³

Thus, when the Zionist terror campaign against the

Palestinian people and their expressed territorial ambitions are considered, a reasonable argument can be made that Transjordan's invasion of the West Bank and the old city of Jerusalem was an act of collective self-defense as provided for in Article 51. Accordingly, this coercion could be considered legal and the territory conquered subject to eventual annexation.

The third issue to be considered in connection with the Zionist claim concerns the method of annexation employed by Transjordan in 1948-1949. It is claimed by the Zionists that this was an unilateral act on the part of King Abdullah¹⁷⁴ but the facts do not support this statement if the actions of the Palestinian people are considered.

These actions began at the second Palestine Arab Conference at Jericho which on December 1, 1948, passed a series of resolutions regarding Palestine. The first of these resolutions provided:

1. Since Palestine was once part of natural Syria (an Arab country) and since the Mandate which was imposed on it without the consent of the population and which lasted until the 15th of May, 1948, did not lead the country to its independence or its incorporation into one of the independent sister countries, the people of Palestine now see through political and military developments in Palestine that the time has come when active steps should be taken with the cooperation of the neighboring Arab States to safeguard their future and decide their ultimate fate of living a life of independence and freedom. It was therefore decided that Palestine and the Hashemite Kingdom of Transjordan be united into one

Kingdom and that King Abdallah Bin Hussein be proclaimed constitutional King over Palestine.¹⁷⁵

This resolution was officially acknowledged by the Government of Transjordan on December 9, 1948, and by the Transjordan Parliament on December 13, 1948.¹⁷⁶ However, the Arab League on December 14, 1948, protested these actions, apparently because it was felt they conflicted with the official policy of the League against partition of Palestine into Jewish and Arab states.¹⁷⁷

After the hostilities in Palestine had been temporarily halted under the 1949 Armistice Agreements, a general election was held in Jordan on April 11, 1950, to choose a Parliament in which both the East and West Banks would have equal representation.¹⁷⁸ In this election 70 per cent of the voters of the West Bank cast ballots and the newly elected National Assembly formally approved the unification of Palestine and Jordan on April 24, 1950, and the resolution of unity was signed by the King the same day.¹⁷⁹ It provided in part:

1. Approval is granted to complete unity between the two banks of the Jordan, the Eastern and Western, and the amalgamation in one single state: The Hashemite Kingdom of the Jordan, under the crown of His Hashemite Majesty King Abdullah ben el-Husein the exalted.¹⁸⁰

This action was condemned initially by the Arab League and it was proposed that Jordan be expelled from the League. However, a compromise was reached "...by which Jordan on May 31, (1950) stated before the League that the annexation was

without prejudice to the final settlement of the Palestine issue."¹⁸¹

The legal effect of these actions by Jordan and the Palestinian people residing in the West Bank area, is unclear. Jordan did not unilaterally annex the territory, as claimed by the Zionists, since the Palestinian people participated in the union of the territories. It can be argued that this participation was an exercise of the right of self-determination of peoples¹⁸² and that it was legally effective to transfer de jure sovereignty to Jordan irregardless of the legality or illegality of Transjordan's conquest of the territory. It can also be argued that Jordan had the legal right to annex the West Bank and the old city of Jerusalem if the conquest was legal under Article 51 of the Charter and thus acquired de jure sovereignty in this manner.

The issue of Jordanian sovereignty over the West Bank and the old city of Jerusalem will probably not be decided until a general peace treaty is concluded for the entire Middle East. However, at present it can be said that there are certain legal and factual bases to support a claim that Jordan is the de jure sovereign over these territories and was not a belligerent occupant, as claimed by the Zionists. It can also be said that the only time the people of these territories exercised the universally recognized right of self-determination, they voted for union with Jordan.

D. EGYPT'S OCCUPATION OF THE GAZA STRIP IN 1948-1949.

The legal status of the Gaza Strip must be considered separately from the legal status of the West Bank and the old city of Jerusalem, for although this area was occupied by Egypt in 1948,¹⁸³ it was never annexed or incorporated into Egypt. This is an important difference, although this territory is similar to that occupied by Jordan in 1948-1949 since it also was included within the territory of the proposed Arab state under the United Nations Partition Resolution.¹⁸⁴

Egypt remained in occupation of the Gaza Strip until June, 1967, although Israel did occupy the area for some time during the 1956 War. However, no state has ever recognized Egyptian de jure sovereignty over the area. Great Britain, which recognized the incorporation of the West Bank into Jordan but not Jerusalem,¹⁸⁵ adopted a policy that no state held sovereignty over the Gaza Strip.¹⁸⁶ However, this policy was explained as being one that viewed the status of the Gaza Strip as being uncertain and not that the territory was open for occupation and annexation as if it were terra nullius.¹⁸⁷

Egypt's treatment of the Gaza Strip during the time its armed forces occupied the area can be considered as a recognition of the British view that the issue of de jure sovereignty is uncertain. Since there is general agreement that the territory was not subject to occupation and Egypt never took steps to annex it after the 1948-49 War, it appears clear that Egypt never became the de jure sovereign.

Accordingly, the only conclusion that can be reached is that de jure sovereignty remains in the entity that held such right under the Palestine Mandate until such time that a general peace treaty is concluded that settles the issue. In this regard, Gaza must be considered unique since no state to any degree had assumed the possible position of de jure sovereign prior to the June, 1967, Six-Day War.

E. THE ZIONIST / ISRAELI OCCUPATION IN 1967 OF THE WEST BANK, THE GAZA STRIP AND THE OLD CITY OF JERUSALEM, CONSIDERING THE SUBSEQUENT ATTEMPTS AT ANNEXATION.

During the Six-Day War in June, 1967, Israeli forces occupied the remainder of Palestine as it existed under the mandate and since that time the government has taken certain steps to incorporate this territory within the area of Israel's de jure sovereignty. Steps amounting to the annexation of the old city of Jerusalem were taken by the Knesset on June 27, 1967,¹⁸⁸ and since that time the government has opened this area for Jewish settlement as announced by Deputy Prime Minister Yigal Allon before the Knesset on December 10, 1969.¹⁸⁹ At that time it was revealed that 200 Jewish families had already moved into a housing project in the Arab portion of the city and that a total of 2100 apartments would be built on 810 acres of land Israel had requisitioned after the June War. It was also announced that the plans call for two more settlements

with 300 private homes and an additional 2000 apartments.¹⁹⁰

This annexation and settlement of the old city of Jerusalem has been formally condemned by the United Nations and the United States on various occasions. The General Assembly at the Fifth Emergency Session on July 4, 1967, adopted a resolution which provided in part:

The General Assembly,
Deeply concerned at the situation prevailing in
Jerusalem as a result of the measures taken by
Israel to change the status of the City,
1. Considers that these measures are invalid;
2. Calls upon Israel to rescind all measures
already taken and to desist forthwith from
taking any action which would alter the
status of Jerusalem;....¹⁹¹

This resolution passed 90 to 0, with 20 abstentions including the United States.¹⁹² However, the abstention of the United States should not be regarded as an approval or recognition of the Israeli action since even before the vote was taken, on June 29, 1967, the government in a formal statement denounced the action taken by Israel and said the United States would not recognize its validity.¹⁹³

Approximately a year later, on May 21, 1968, the Security Council adopted a resolution which provided in part:

The Security Council,
Recalling General Assembly Resolutions 2253 (ES-V)
and 2254 (ES-V) of 4 and 14 July, 1967,

.

Bearing in mind the need to work for a just and
lasting peace,

Reaffirming that the acquisition of territory by military conquest is inadmissible,

1. Deplores the failure of Israel to comply with the General Assembly resolutions mentioned above,
2. Considers that all legislative and administrative measures and actions taken by Israel, including expropriations of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;
3. Urgently calls upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem;....¹⁹⁴

Israel, of course, has ignored these resolutions as evidenced by the reports of Jewish settlements on land expropriated from the Arabs within the area of the old city of Jerusalem.

However, since the Six-Day War Israel has not limited itself to the old city of Jerusalem but has also taken steps to change the status of the West Bank area. These steps followed the statement of Israeli Defense Minister Moshe Dayan on June 11, 1967, when he said, "I don't think that we should in any way give back the Gaza Strip to Egypt or the western part of Jordan to King Hussein...."¹⁹⁵ What followed this statement is described as follows:

Acts committed for the alleged purpose of military security, the systematic destruction of villages of the West Bank, accompanied by the summary removal of their inhabitants and the resultant economic dislocation, has led many foreign observers to consider seriously that this practice - by no means infrequent - constitutes a policy, either official or unofficial, of "cleansing" these areas of Arabs.¹⁹⁶

Actually, the Zionists appear to be pursuing the same policy since 1967 that they followed in 1948 to 1949 of excluding all non-Jews from the territory they intend to incorporate into their state. In regard to the West Bank, however, they have even prepared a legal argument to justify this possible incorporation.

This legal argument is based on the fact that Israel has "reversionary" rights as the legitimate sovereign over the West Bank and concludes that "(t)he legal standing of Israel in the territories in question (referring to the West Bank) is thus that of a State which is lawfully in control of territory in respect of which no other States can show a better title."¹⁹⁷

This conclusion is based on the argument, previously discussed, that Jordan never acquired sovereignty over the West Bank because its 1948 intervention was in violation of the United Nations Charter and was aimed at defeating the implementation of the United Nations Partition Plan.¹⁹⁸ Therefore, after the 1949 ceasefire Jordan was at most a belligerent occupant, according to the Zionists,¹⁹⁹ and never acquired the rights of a legitimate sovereign because a belligerent occupant can not annex occupied territory either before or after a cease fire or armistice but only after a treaty of peace.²⁰⁰ Thus, the Zionists argue, in relation to the West Bank "...Jordan is not entitled to the reversionary rights of a legitimate sovereign."²⁰¹

The interesting factor of this Zionist argument concerning

the West Bank is that it completely ignores the actions the Israeli government has taken to annex the old city of Jerusalem. These actions have been condemned by the United Nations Resolutions in which the International Community has reaffirmed the principle that no state can acquire sovereignty over territory controlled as a result of military conquest and this principle is applicable to the West Bank and the Gaza Strip, as well as the old city of Jerusalem.

International law, as previously discussed, did at one time recognize the acquisition of sovereignty over territory as the result of military conquest.²⁰² However, today it appears to be an accepted principle of international law that the victor in any coercion situation does not acquire sovereignty over conquered territory whether or not it is the aggressor.²⁰³ This, of course, was not an instantaneous change in the law but one that has evolved over the last 80 years.²⁰⁴ It was recognized in the Security Council Resolution of November 22, 1967, which provides in part, "...the inadmissibility of the acquisition of territory by war",²⁰⁵ and reaffirmed in the Security Council Resolutions of May 21, 1968.²⁰⁶ Accordingly, under this rule Israel has not acquired de jure sovereignty over any of the territory it occupied during the Six-Day War and can be regarded only as a belligerent occupant in the West Bank, the Gaza Strip and the old city of Jerusalem.

F. CONCLUDING APPRAISAL OF THE LEGAL STATUS OF THE
OCCUPIED TERRITORIES.

Israel's right to de jure sovereignty over the West Bank, the Gaza Strip and the old city of Jerusalem is closely related to its right of sovereignty over other territories under its control. Basically, Israel exists as a sovereign state only through the United Nations Partition Plan of November 29, 1947, which has been referred to as an "act of international legislation."²⁰⁷ Its only recognized boundaries are those provided for under the Partition Plan²⁰⁸ and any territory it controls in excess of those boundaries has been conquered through the use of coercion.

The legal status of the territory the Zionists occupied in 1948-1949 in excess of that provided for under the Partition Plan is presently uncertain. It appears to this writer that the international community, including all the Arab states except Syria, has, through the November 22, 1967 Security Council Resolution, proposed that Israeli de jure sovereignty be recognized over this territory as part of a general solution to the Middle East coercion situation.

However, there is no question about Israel's right of de jure sovereignty over the territory occupied during the Six-Day War in June, 1967, if the Resolutions of the United Nations and accepted principles of international law are considered. The international community has repeatedly refused to recognize any such right of de jure sovereignty through these Resolutions

which have as their basis accepted principles of international law.

One does not even have to accept the principle that the victor in a coercion situation never acquires sovereignty over conquered territory, whether or not it is an aggressor, to reach this conclusion. Even if the more liberal view that territory conquered in a legal war can not be annexed until there is a treaty of peace or a general cessation of hostilities,²⁰⁹ is applied, Israel can not be regarded as the de jure sovereign over this territory since neither condition has been fulfilled.

Accordingly, the only possible conclusion under international law is that Israel has not acquired, and cannot through annexation acquire de jure sovereignty over any of the territory it occupied during the June, 1967, Six-Day War. Thus, Israel must be regarded as a belligerent occupant of the West Bank, the Gaza Strip, the old city of Jerusalem, the Golan Heights and the Sinai, and is required to apply the laws of war applicable to occupied territories within these areas.

When the applicability of the laws of war are considered three broad groups of claims arise concerning bases of power. Two of these groups, those involving institutions and resources, will not be specifically considered in this study. However, the third group, those involving people,²¹⁰ will be

considered in connection with the applicability of the 1949 Geneva Conventions to the Israeli/Palestinian people coercion situation.

Claims regarding people relate to prisoners of war and "...to the control of the inhabitants of occupied territory."²¹¹ The laws of war applicable in regard to these claims consist of a balancing of the principles of military necessity and humanitarianism.²¹² Military necessity during a belligerent occupation must take into consideration "...the security of the occupation forces from hostile acts on the part of the inhabitants..." and "...the maintenance of assured and adequate sources and procedures of procurement for the needs of the army of occupation."²¹³ At the same time, the requirements of humanitarianism, as basically embodied in the 1949 Civilians Conventions, must be applied.²¹⁴

Therefore, in considering the applicability of the 1949 POW and Civilians Conventions to the Israeli/Palestinian people coercion situation these concepts of military necessity and humanitarianism are particularly relevant. Since Israel must be regarded as a belligerent occupant in most of the territory under its control, there would appear to be an initial presumption that the 1949 Civilians Convention is applicable. At the same time, the applicability of the 1949 POW Convention to those Palestinian combatants detained by Israel will be governed by similar standards, since both Conventions have a common article that determines their applicability to coercion situations.²¹⁵

IV. THE APPLICABILITY OF ARTICLE 2 OF THE 1949 GENEVA
CONVENTIONS TO THE ISRAELI / PALESTINIAN PEOPLE
COERCION SITUATION.

Many writers in discussing the applicability of the 1949 POW and Civilians Conventions to the Israeli/Palestinian people coercion situation consider only whether the Palestinian people satisfy the requirements of Articles 4 and fail to first determine whether the Conventions are even applicable to the conflict, as provided in Article 2. What these writers fail to recognize is that Article 2 determines which coercion situations come within the Conventions and Article 4 of each Convention determines which individuals in a given coercion situation are entitled to their humanitarian protections. Thus, before deciding that certain individuals satisfy the criteria of Article 4 and are entitled to the protections of the Conventions, it must first be decided that the coercion situation satisfies the requirements of Article 2.

This task could be greatly simplified in the case of the Palestinian people by determining that they are fighting on behalf of the Arab states and therefore satisfy the requirements of Article 2 in a derivative manner since all of the Arab states adjacent to Israel are parties to the Conventions.²¹⁶ If this were done, the only remaining question would be whether the requirements of Articles 4 were satisfied to determine that the Palestinian people are entitled to the protections of the

Conventions.

However, this analysis would ignore the basic factual situation of the present Middle East conflict in which the Palestinian people must be regarded as a separate participant. They are clearly not fighting on behalf of any of the Arab states but for themselves and for their own objectives. Thus, they are not entitled to the protections of the Conventions in a derivative manner because the adjacent Arab states are parties to the Conventions and can receive such protection only if they as a separate entity satisfy the requirements of Article 2.

The basic juridical issue involved is whether the Conventions are applicable to a coercion situation between a High Contracting Party, Israel, and a stateless people, the Palestinian people, which takes place, in part, in territory over which no state is the *de jure* sovereign. This is a factual situation clearly not envisioned by the drafters of the Conventions, as evidenced by their language and the commentaries on them, since international hostilities normally take place between states and the Conventions were intended to regulate international coercion situations. Therefore, in interpreting Article 2 to determine its applicability to the Israeli/Palestinian people coercion situation one must ignore to a certain extent the plain meaning of the Article, and look instead to the general purpose of the Conventions and interpret the Article so as to give effect to that purpose.

A. AN EXAMINATION OF ARTICLE 2 IN A TRADITIONAL MANNER.

When Article 2 was drafted the concern of the drafters was not with international coercion situations in which one of the parties was not a state but with the desire to make the Conventions applicable to all instances of "armed conflict" between the "High Contracting Parties" and not just to instances of declared war. This concern arose because of the refusal of certain states in previous international conflicts to apply humanitarian conventions either because they contested the legitimacy of one of the other belligerent states or because there had been no formal declaration of war. There had also been instances in which the occupation and subsequent annexation of states had been given as a reason for not applying the international conventions.²¹⁷ In order to overcome these claims as to the future non-applicability of the 1949 Geneva Conventions, Article 2 was drafted so as not to require a formal declaration of war or the recognition of a state of war by both parties to an international conflict.²¹⁸ Still the Conventions generally contemplated hostilities between states since "(t)he kind of situation traditionally envisaged in the course of development of the rules of warfare is, of course, a conflict in which the participants on both sides are nation-states."²¹⁹

Thus, the 1949 POW and Civilians Conventions are applicable "...in cases of declared war or armed conflict where the state of war is recognized by at least one party."²²⁰

Traditionally, war has been defined as a contention between states²²¹ and armed conflict within the meaning of Article 2 is defined as

(a)ny difference arising between two States and leading to the intervention of members of the armed forces..., even if one of the Parties denies the existence of a state of war.²²²

Accordingly, even though the drafters clearly intended to extend the applicability of the Conventions to international coercion situations in which war had not been formally declared, they did evidently contemplate that the participants would be states, and not a state and an entity such as the Palestinian people. This was because the 1949 Geneva Conventions were drafted to settle matters of controversy over the conduct of warfare following the experiences of World War II.²²³

However, in drafting Article 2 the drafters envisioned three types of coercion situations which would bring the Conventions into effect. The first paragraph of Article 2 provides:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply in all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.²²⁴

This paragraph clearly is concerned with coercion situations arising between states since only states are High Contracting Parties, and provides that the Conventions are applicable in all

wars and armed conflicts between states which are signatories. This paragraph is not applicable to the Israeli/Palestinian people coercion situation because, although Israel is a High Contracting Party,²²⁵ the Palestinian people are not and it is questionable whether they have the juridical status to become such until they are recognized as a state.

The second situation which brings the Conventions into operation is determined by the second paragraph of Article 2, which provides, "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."²²⁶ This paragraph, on its face, appears to be applicable to the Middle East coercion situation because of the Israeli occupation in June, 1967, of the territory of certain adjacent Arab states which are High Contracting Parties, namely Syria, Jordan, and Egypt.²²⁷ However, even if Israel is considered a belligerent occupant of this territory and it is considered the territory of High Contracting Parties, the drafters of this paragraph evidently did not consider that it would apply to this type of occupation.

This paragraph was intended to fill a possible gap in the coverage of the first paragraph of Article 2. The International Red Cross Commentary on the 1949 Civilians Convention states, concerning paragraph 2:

It does not refer to cases in which territory is occupied during hostilities; in such cases the Convention will have been in force since the

outbreak of hostilities or since the time war was declared. The paragraph only refers to cases where the occupation has taken place without a declaration of war and without hostilities, and makes provision for the entry into force of the Convention in those particular circumstances.²²⁸

Therefore, if this interpretation is accepted the second paragraph of Article 2 will be applicable only in those cases where territory is occupied without any resistance²²⁹ and would not be applicable to the coercion situation under consideration because the Israeli occupation of the territory in June, 1967, took place during an armed conflict. Thus, the applicability of the 1949 POW and Civilians Conventions to the Israeli/Palestinian people coercion situation can not be dependent on either the first or second paragraphs of Article 2.

The last or third paragraph of Article 2 is concerned with the applicability of the Conventions to coercion situations in which one of the participants is not a High Contracting Party and provides:

Although one of the Powers in a conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.²³⁰

In essence this paragraph provides that a participant which is a non-signatory to the Conventions can bring them into force between it and a High Contracting Party simply by accepting and applying their provisions. This acceptance need not be in

the form of an express declaration but can be tacit and implied from a de facto application of the provisions.²³¹ All that is required is that formally or informally the non-signatory participant in an international coercion situation agree to be bound by the provisions of the Conventions to enjoy the benefits of them.

Thus, the third paragraph of Article 2 raises the issue of whether the Palestinian people can invoke the provisions of the Conventions simply by accepting and applying them. This paragraph speaks of a "Power" in a conflict and on its face does not exclude an entity which is not a state but is still an independent participant in an international coercion situation. The issue then is whether it provides that the Conventions are to be considered applicable to an international coercion situation between a High Contracting Party and a non-state participant, if the latter agrees to accept and apply their provisions.

In order to resolve this issue the purposes of the 1949 POW and Civilians Conventions must be considered and the Conventions interpreted to give effect to those purposes. At the same time the all-inclusive nature of the Conventions to coercion situations is relevant in determining their applicability and will also be considered.

B. AN EXAMINATION OF THE 1949 GENEVA CONVENTIONS
UNDER THE GENERAL PURPOSE APPROACH / THE
PRINCIPLE OF EFFECTIVENESS.

Generally, international law during a coercion situation seeks to balance two competing factors in formulating rules governing the conduct of war by the participants: military necessity and humanitarianism.²³² This is normally accomplished by international decision-makers formulating a common policy or set of rules that will be applicable under varying conditions throughout the world in all coercion situations of an international nature.²³³ The international laws governing the conduct of war, and in particular the treatment of war victims, are therefore, a uniform standard applicable to all participants in international coercion situations which have as an underlying purpose the promotion of humanitarianism.

This purpose of the laws of war is the entire basis of the 1949 Geneva Conventions, including the POW and Civilians Conventions. These Conventions were not intended to be solely a codification of the existing 1949 international law or a revision of previous Conventions, but rather entirely new Conventions extending humanitarian principles of law to all people affected by modern warfare.²³⁴ In this respect they are intended to be all inclusive and were drafted on the basis of past experience during the 20th century.

World War II had demonstrated the inadequacy of the then existing laws of war to protect humanitarian values and "(t)he

Geneva Conventions were established in 1949 to reinstate and reinforce certain basic humanitarian rights that belong to every individual involved in an armed conflict."²³⁵ The 1949 Geneva Conventions are, therefore, a humanitarian effort to control the treatment of war victims²³⁶ and should always be interpreted to accomplish this purpose to the greatest possible extent.

In this regard the Conventions are intended for humanitarian purposes rather than being solely contractual engagements between the parties²³⁷ and they "...have been drawn up first and foremost to protect individuals and not to serve State interests."²³⁸ Thus, Article 1, which provides, "(t)he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances,"²³⁹ has been interpreted as requiring a party to apply the Conventions even if a belligerent party breaches its obligation to do so.²⁴⁰ However, the term "in all circumstances" refers to the situations defined in Article 2²⁴¹ so that that Article still determines to what coercion situations the Conventions are applicable.

Therefore, in determining the applicability of the Conventions their purpose of extending humanitarian protection to all war victims must be considered. They were not intended to benefit states but individuals and should always be interpreted to effect this purpose. The result of denying the applicability of the 1949 Geneva Conventions in a given coercion situation will be that the war victims involved will

be left virtually unprotected and the purpose of the international decision-makers in drafting the Conventions will be defeated.

C. THE INTERNATIONAL CHARACTER OF THE ISRAELI /
PALESTINIAN PEOPLE COERCION SITUATION.

When the applicability of the 1949 POW and Civilians Conventions to the Israeli/Palestinian people coercion situation is considered one important consideration is whether this conflict is one of an international character. Generally, the international laws of war, including the 1949 Geneva Conventions, are applicable only to international conflicts and municipal law is applicable to internal or non-international conflicts. This was recognized by the drafters of these Conventions when they included Article 3 in each Convention, which in itself was a radical departure from previous Conventions. Article 3 is intended to provide minimal protection to war victims in coercion situations not of an international character and represents the first time that any of the provisions of an international convention were extended to internal conflicts or civil wars.²⁴²

This extension of international law to non-international coercion situations is helpful in determining whether the 1949 POW and Civilians Conventions are applicable to the Israeli/Palestinian people coercion situation. The Conventions were

intended to be all-inclusive and extend certain humanitarian protections to all war victims and Article 3, which extends only minimal protections to war victims²⁴³ is applicable only to non-international coercion situations.²⁴⁴ Therefore, if the coercion situation under consideration does not come within the provisions of Article 3 it can be assumed that the drafters intended it to come within the provisions of Article 2 and its war victims to enjoy the more extensive protections of the Conventions. It is only in this manner that the all-inclusive applicability of the Conventions will be achieved and their purposes effectuated.

1. TRADITIONAL DEFINITIONS OF INTERNATIONAL COERCION

Before considering the applicability of Article 3 to the coercion situation under consideration brief mention should be made of the traditional distinctions between international war and civil or internal war. Traditionally, international writers have applied the rule, "(t)o be war, the contention must be between States."²⁴⁵ At the same time civil war is defined as the situation, "...when two opposing parties within a State have recourse to arms for the purpose of obtaining power in the State, or when a large portion of the population of a State rises in arms against the legitimate Government".²⁴⁶ Civil war has also been defined by Messrs. McDougal and Feliciano as

...a genuinely internal conflict within a nation-

state in which a counter-elite group either seeks forcibly to organize a new political unit separate from the old body politic, or to capture effective control of existing governmental structures.²⁴⁷

Thus, these definitions limited international war to conflicts between states and civil wars to conflicts within a state or an internal insurrection. Neither would encompass the Israeli/Palestinian people coercion situation since it is a contention between a state and an entity which is not a state which is taking place across international boundaries and not within the territory of a single state.

Other international writers have extended the definition of international war to include those civil wars in which the rebels have achieved belligerent status. They define international war as coercion between states or "...civil war where the rebel elements have achieved belligerent status."²⁴⁸ A civil war in which the rebels have not achieved belligerent status is still not recognized as an international war and accordingly, only Article 3 of the 1949 Geneva Conventions is applicable to such conflicts.²⁴⁹

Even according to this view of the applicability of the laws of war, the Palestinian people would either have to comprise a state or be engaged in a civil war, i.e., a war within the territory of a single state or internal insurrection, and be recognized as belligerents, before the international laws of war would be applicable to their coercion situation with Israel. The facts, previously discussed,²⁵⁰ do not

support either of these conclusions. Accordingly, if the traditional rules of international law are utilized the 1949 Geneva Conventions would not be applicable in that, except for Article 3, they are applicable only to international coercion situations.

2. A VALUE ORIENTED APPROACH TO A DEFINITION OF INTERNATIONAL COERCION

International law, as any other system of law, must develop to meet changing circumstances and new factual situations. It can not remain static but must change so as to be applicable to new situations of international coercion, such as the Israeli/Palestinian people coercion situation. The failure of international law to so react will only result in a world order in which coercion rather than the rule of law controls the destinies of peoples.

Thus, in determining whether a particular coercion situation is of an international nature so that the international law of war is applicable, the traditional rules must frequently be ignored and the coercion situation analyzed by considering the purposes and functions of the laws of war. This requires an inquiry into the factual and policy problems involved which can be a meaningful inquiry only after "...the decision-maker (the applier) is identified, his policy objectives clearly articulated, and the various conditions and the procedures of

application specified."²⁵¹

The Palestinian people have been examined in this manner with the conclusion that they are an independent participant in a coercion situation with a sovereign state, Israel.²⁵² They are clearly seeking their own objectives, are not fighting on behalf of any state, are possessed of their own bases of power, and have initiated coercion across international boundaries. Accordingly, they must be regarded as an independent non-state participant in a coercion situation that is not confined to the territory of a single state. The issue that remains, however, is whether the resulting coercion situation is one of international character under international law so as to be governed by the broad and extensive provisions of the 1949 POW and Civilians Conventions or is one of non-international character so that at most Article 3 of the Conventions would be applicable.

Messrs. McDougal and Feliciano have suggested that war or international coercion exists where there results "...the factual process of coercion across national boundaries".²⁵³ This definition also requires an analysis of the objectives of the participants and their methods of operation under the existing conditions of the coercion situation²⁵⁴ and therefore does not suggest that all coercion projected across international boundaries is to be accorded the protection of international law. It only furnishes a starting point for a juridical inquiry into the nature and character of any given coercion situation.

This definition does recognize that any analysis of the laws of war, particularly the 1949 POW and Civilians Conventions, that are applicable to a given coercion situation must depend on the total nature of the coercion situation and the purposes of the laws of war that are under consideration. The war victims are the most important factor in any such analysis because "(t)he basic effort is to minimize the unnecessary destruction of values through the application of a law of war..."²⁵⁵ Therefore, what is required is an "...orientation in the process of legal decision by which community intervention is organized in the attempt to regulate international coercion."²⁵⁶ Such an orientation is important in considering the laws of war because in essence they are standards imposed by the world community which regulate the conduct of international coercion between participants and in some instances when the participants involved have not previously agreed to be bound.²⁵⁷

Thus, in considering the character of the coercion situation between Israel and the Palestinian people this method of analysis has been utilized. It is clear that the starting point has been reached because there presently exists "...the factual process of coercion across national boundaries".²⁵⁸ This is true without determining the territorial limits of Israel since the Palestinian people operate across the Lebanese and Jordanian borders and, accordingly, the legal status of the occupied territories is not initially relevant

to this inquiry. What is relevant are the purposes of the 1949 POW and Civilians Conventions, the nature and character of the coercion situation in issue, the nature and objectives of the participants, and the "...process of legal decision by which community intervention is organized in the attempt to regulate international coercion".²⁵⁹ The first three factors have previously been discussed and a discussion of Article 3 of the 1949 Geneva Conventions is relevant to a consideration of the fourth.

3. ARTICLE 3: ITS RELEVANCE TO THE INTERNATIONAL CHARACTER OF THE ISRAELI / PALESTINIAN PEOPLE COERCION SITUATION.

Article 3 is relevant to the applicability of the general provisions of the 1949 POW and Civilians Conventions if one considers that through it the drafters excluded certain coercion situations with the intention of including all other coercion situations of an international character within the possible applicability of Article 2. Thus, if the Conventions are to be considered all-inclusive any coercion situation not within the coverage of Article 3 would be considered within Article 2 as one of an international character.

Article 3 provides in part: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following

provisions:....."²⁶⁰ The Article then lists the applicable provisions of law that must be applied in such a coercion situation.²⁶¹

Article 3 is relevant in determining whether the Israeli/Palestinian people coercion situation is to be considered one of international character because

(i)t applies to non-international conflicts only, and will be the only Article applicable to them until such time as a special agreement between the Parties has brought into force between them all or part of the other provisions of the Convention.²⁶²

In determining what types of conflicts are to be considered non-international the language of Article 3 is extremely relevant. That language speaks of conflicts "...occurring in the territory of one of the High Contracting Parties,..."²⁶³ and can be construed to mean a conflict occurring solely within the territory of a single state.

This construction is reasonable from the language of the Article and is also supported by those familiar with the drafting of the 1949 Geneva Conventions. The international Red Cross Commentary reviews the drafting of Article 3²⁶⁴ and then states,

...the conflicts referred to in Article 3 are armed conflicts, with armed forces on either side engaged in hostilities - conflicts, in short, which are in many respects similar to an international war, but take place within the confines of a single country.²⁶⁵

This is the type of conflict normally referred to as a civil war

or internal insurrection, and must be contrasted with those conflicts which take place between two or more states or in the territory of two or more states and are referred to as international wars or coercion situations.

Since Article 3 is applicable to coercion situations not of an international character, the type of hostilities described therein must be regarded as non-international in nature. Thus, if the coercion situation under consideration does not "...take place within the confines of a single country..."²⁶⁶ it can be assumed that the 1949 POW and Civilians Conventions would classify it as one of international character and, if the other requirements are satisfied, the international laws of war would be binding on the participants. This definition of international coercion is in agreement with the definition previously discussed of "...the factual process of coercion across national boundaries"²⁶⁷ and both would classify the Israeli/Palestinian people conflict as an international coercion situation.

When the coercion situation between Israel and the Palestinian people is considered in this manner it must be considered one of international character since it takes place beyond the territorial limits of a single state. Accordingly, the international laws of war must be considered applicable if the participants comply with the provisions of that law concerning their applicability to international coercion situations.

D. CONCLUDING APPRAISAL AND ANALYSIS OF THE
APPLICABILITY OF ARTICLE 2 OF THE 1949 GENEVA
CONVENTIONS TO THE ISRAELI / PALESTINIAN
PEOPLE COERCION SITUATION.

Basically, the 1949 Geneva Conventions, including the POW and Civilians Conventions, were designed to protect all people affected by international coercion and necessarily require a balancing of the old claim of military necessity with this humanitarian purpose. At the time they were written, the Conventions and their drafters, did not anticipate an international coercion situation in which one of the participants would not be a state. Accordingly, the Conventions were written with the traditional definition of international coercion as a contention between states in mind.

The Israeli/Palestinian people coercion situation necessitates a re-examination of this concept of the applicability of the international laws of war because it is not a contention between states but still takes place beyond the borders of a single state. Thus, international law is faced with a challenge as to whether or not it will recognize this type of coercion situation as being within the coverage of the 1949 Geneva Conventions.

Under the third paragraph of Article 2 a participant in an international coercion situation should be able to enjoy the protections of the 1949 POW and Civilians Conventions for

its people if it agrees to accept and apply their provisions in its relations with the other belligerent power. This interpretation will give the maximum effect to the purpose of the Conventions by extending their humanitarian provisions to all people affected by an international coercion situation. This will also achieve the balancing of this purpose with the claim of military necessity, which is the basic purpose of the international laws of war.

Accordingly, the only logical conclusion that can be reached is that the Israeli/Palestinian people coercion situation is within the provisions of the third paragraph of Article 2, as one in which one of the Powers to a conflict is not a High Contracting Party. The purpose of the 1949 POW and Civilians Conventions was to extend certain humanitarian protections to all war victims and this purpose will not be achieved in this instance unless such a conclusion is reached. Article 3 is clearly not applicable since the Israeli/Palestinian people coercion situation is not a civil war or internal insurrection in that it does not take place solely within "...the territory of one of the High Contracting Parties..."²⁶⁸ Therefore, to give effect to the humanitarian purposes envisioned by the drafters the conflict must be regarded as one of international character and the provisions of the 1949 POW and Civilians Conventions made available to all resulting war victims. The only action required of the participants is for both belligerents to accept and apply

those provisions, although such action by only the Palestinian people would require Israel to do likewise.²⁶⁹ This aspect of the problem will be considered in the succeeding sections of this study.

This same conclusion has been reached by the United Nations General Assembly and Security Council which have adopted various resolutions calling upon all the participants in the Middle East coercion situation to apply the 1949 POW and Civilians Conventions.²⁷⁰ In addition, it is supported by the third category of combatants under Article 4 of the 1949 POW Convention which are entitled to prisoner of war status upon detention by the enemy. That category consists of those regular armed forces fighting on behalf of an authority not recognized by the detaining power and will be fully discussed in the next section of this study.

V. THE INDIVIDUALS ENTITLED TO THE PROTECTION OF THE 1949 POW CONVENTION IN THE ISRAELI / PALESTINIAN PEOPLE COERCION SITUATION.

Even though it has been determined that the 1949 POW Convention is applicable to the Israeli/Palestinian people coercion situation, the issue remains as to which individuals are entitled to its protections. Basically, these individuals can be divided into three categories for this inquiry: first, the members of the Israeli armed forces, second, the members of the various Palestinian guerrilla organizations operating from outside Israel and the occupied territories, and third, the members of the various Palestinian guerrilla organizations operating inside Israel and the occupied territories. All of these categories of military personnel will be considered since the Israeli military personnel are entitled to the protections of the 1949 POW Convention just as are the Palestinian military personnel, under the applicable doctrines.

This opinion is not shared by the Israeli government as evidenced by a statement of its foreign minister. Mr. Abba Eban has stated the official position as follows:

Addressing a British Labor Party branch in Jerusalem, Foreign Minister Abba Eban stated on August 5 that the Fatah terrorist organization was outside the jurisdiction of international law and could not claim its protection.²⁷¹

Accordingly, Israel has refused to apply the provisions of the 1949 POW Convention to any of the Palestinian guerrilla

fighters when they are captured or surrendered and in so doing has ignored various resolutions of the United Nations.

These United Nations Resolutions date from June 14, 1967, when the Security Council said "...that all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 should be complied with by the parties involved in the conflict,...".²⁷² This resolution was acknowledged by the General Assembly on July 4, 1967, and its language repeated in a General Assembly Resolution of that date,²⁷³ and was reaffirmed by the Security Council on September 27, 1968.²⁷⁴ Still, Israel has refused to apply the provisions on the 1949 POW Convention to detained Palestinian combatants.

Many writers have assumed outright that this Israeli refusal is a violation of public international law and have failed to determine whether the individuals so detained are entitled to the protections of the Convention. Others have assumed the Palestinian forces are resistance fighters and are therefore entitled to the protections of the Convention. At the same time the United Nations has called upon all parties to the conflict to observe the provisions of the 1949 POW Convention but has never specified which individuals are entitled to its protection.

This section will be a juridical inquiry into this issue under Article 4 of the Convention. It should be recalled that, although Article 2 determines which coercion situations are

regulated by the Convention, Article 4 determines which specific individuals in a given coercion situation are entitled to its protections. Therefore, an initial determination that the Israeli/Palestinian people coercion situation is to be regulated by the 1949 POW Convention under Article 2 does not mean that all detained combatants are within the provisions of Article 4 so as to be entitled to its protections.

Article 4 recognizes several categories of combatants that are entitled to the protections of the Convention, three of which will be analyzed in this study. The other categories of individuals entitled to prisoner of war status provided for in Article 4 will not be discussed since they are not considered primarily relevant to the coercion situation in question.

Initially, Article 4 provides,

- A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy: ...²⁷⁵

and then proceeds to list several categories. This initial paragraph does however, set forth two conditions that must be satisfied before an individual is to be accorded the status of a prisoner of war. The first condition is that he must belong to one of the enumerated categories, and the second is that he must have "fallen within the power of the enemy".

This second condition need not be extensively discussed but it should be noted that it applies to all individuals who

come under the control of the enemy, whether they are captured or surrender, and are within one of the enumerated categories.²⁷⁶ The "enemy" refers to any adversary during an armed conflict or declared war that is within the provisions of Article 2. Thus, in the case of the Israeli/Palestinian people coercion situation the second condition is satisfied when individual combatants come under the control of the other belligerent, whether they surrender or are captured, since it has previously been determined that this conflict is within the provisions of Article 2.²⁷⁷ Accordingly, the individual categories of detained combatants that are protected by the Convention will now be discussed.

A. MEMBERS OF PARTISAN GROUPS AS PROTECTED COMBATANTS.

Some writers that have considered the applicability of the 1949 POW Convention to the Israeli/Palestinian people coercion situation have concluded that the Palestinian combatants must be considered prisoners of war upon detention because they are partisans. This conclusion is apparently based on the claim of the Palestinian people that they are resistance fighters, fighting the Zionist occupation of Palestine,²⁷⁸ and fails to adequately analyze the factual bases of this claim. Such an analysis will be made in this study but before proceeding to that discussion the provisions of Article 4 concerning resistance fighters or partisans will be first considered.

These provisions deal with the second category of

combatants that are entitled to prisoner of war status under Article 4 and provide:

- (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
 - (a) that of being commanded by a person responsible for his subordinates;
 - (b) that of having a fixed distinctive sign recognizable at a distance;
 - (c) that of carrying arms openly;
 - (d) that of conducting their operations in accordance with the laws and customs of war.²⁷⁹

Article 4A (2), quoted above, appears to have been designed to extend the protections of the 1949 POW Conventions to the resistance-type military organizations that operated during World War II throughout Europe. Since these organizations were loosely organized, did not normally wear uniforms and concealed their weapons, specific provisions were included in this regard.²⁸⁰ It was also agreed at the 1949 Geneva Conference that the partisan organizations would have to have an adequate military organization to ensure that the conditions were fulfilled.²⁸¹

These requirements are detailed in paragraph A(2) of Article 4 and it was believed that their inclusion would give this section limited applicability. One writer has observed that

(m)embers of organized resistance movements will rarely meet the tests established by Article 4 since, to accomplish their mission, they must work secretly, wear no uniforms, conceal their weapons and withhold their identify prior to their strike.²⁸²

Even Messrs. McDougal and Feliciano noted this factor when they wrote:

Guerrilla forces commonly fail to exhibit all the characteristics that belligerents have habitually required as prerequisites for admission to the category of permissible combatants. Subordination to a responsible commander has perhaps been easy enough. ...Compliance with the other traditional requisites of permissible combatancy, however, is commonly rendered very difficult by the very nature of guerrilla operations. Carrying arms openly and displaying "fixed, distinctive and recognizable signs" would clearly often preclude the secrecy and tactical surprise essential to the success of guerrilla warfare.²⁸³

Although these opinions concern the contemplated limited nature of the applicability of the 1949 POW Convention to partisan forces, they also help to provide a definition of that type of combatant. Generally what was contemplated by the drafters of the Convention as partisans were those civilian inhabitants of occupied territories who join guerrilla forces and take part in active combat with the forces of the belligerent occupant.

These operations are generally "...characterized by mobility, stealth and secrecy, and an ability to sink at will into the protective anonymity of the civilian population."²⁸⁴ Therefore, in considering whether Palestinian combatants should

be considered as partisans these observations should be considered and it must be determined whether they more resemble regular armed forces or partisans, as contemplated by the drafters of the 1949 POW Convention.

When this provision of Article 4 relating to partisan combatants is applied to the Palestinian people a number of interesting legal and factual issues therefore become relevant. Only those resistance forces fighting on behalf of a party to the conflict are entitled to prisoner of war status so it must first be determined if this condition is satisfied. In this regard, the International Red Cross Commentary provides:

Resistance movements must be fighting on behalf of a "Party to the conflict" in the sense of Article 2, otherwise the provisions of Article 3 relating to non-international conflicts are applicable, since such militias and volunteer corps are not entitled to style themselves as a "Party to the conflict."²⁸⁵

This paragraph relates, of course, to the traditional concept that only a state can be a belligerent in an international coercion situation previously discussed and rejected,²⁸⁶ and if strictly applied to the factual process of coercion in the Middle East could result in the denial of prisoner of war status to the Palestinian combatants. It has previously been determined that the Palestinian people are an independent participant in the Middle East coercion situation, and are therefore, not fighting on behalf of any state²⁸⁷ and are accordingly themselves parties to the conflict.

One method of avoiding this problem is to accept the Zionist claim that the Palestinian combatants are really an entity created by the Arab states. In this respect, the Zionists claim that the Palestinians are not their own masters and are therefore not an autonomous factor in the conflict.²⁸⁸ If this claim were to be accepted, then the Palestinian combatants would be entitled to prisoner of war status since they would be fighting on behalf of parties to the conflict which are also High Contracting Parties under Article 2. The only relationship required between resistance fighters and the "party to the conflict" is

...a de facto relationship between the resistance organization and the party to international law which is in a state of war ... (which) ... may find expression merely by tacit agreement, if the operations are such as to indicate clearly for which side the resistance organization is fighting.²⁸⁹

This relationship may be indicated by actions such as the delivery of weapons and supplies²⁹⁰ or by an affirmative declaration by the government of one of the national entity participants. Clearly, this relationship has been established between the Palestinian people and the Arab states, if the former are not to be regarded as an independent participant in the Middle East coercion situation.

Other Zionist claims concerning the Palestinian combatants would also appear to satisfy the first three conditions that resistance fighters must meet before they are to be accorded prisoner of war status. Yosef Takoah, Israeli Ambassador to

the United Nations, has stated that

(t)oday it is public knowledge that these raiders (referring to the Palestinians) are organized in para-military units, appear in military uniforms, undergo military training with the armies of Jordan, Egypt, Syria and Iraq, receive their weapons from those armies and are commanded by regular army officers.²⁹¹

This statement, therefore, would satisfy the requirements that the resistance forces are fighting on behalf of a party to the conflict, are commanded by a responsible person, have a recognizable fixed sign and carry arms openly.

Additional claims made by the Zionists that the Palestinians operate from Jordan and other Arab countries, outside the occupied territories,²⁹² and that they "...are not local inhabitants of the West Bank or the Gaza area"²⁹³ and are therefore not entitled to prisoner of war status, are easily answered. Resistance forces are entitled to the protections of the 1949 POW Convention no matter where they are operating, whether in their territory or outside, on water, on land or in the air, and whether within or without of occupied territories.²⁹⁴

Israel's claim that the Palestinians are led by regular army officers is not justification for the denial of prisoner of war status since the leaders of the resistance forces may be either military or civilian. The requirement is only that the leaders are responsible for the action taken on their orders and maintain discipline as in regular armed forces.²⁹⁵

The Zionist claim that the Palestinian combatants appear in uniform does not mean that the requirement that a sign be worn by resistance fighters, which is fixed and distinctive, recognizable at a distance, replacing a uniform and worn at all times,²⁹⁶ has not been satisfied. Normally it is required that "...the sign must be the same for all members of any one resistance organization, and must be used only by that organization."²⁹⁷ In fact, some international writers have even suggested that this requirement may no longer need to be satisfied since "...combat military uniforms today are deliberately designed to enhance invisibility by visual integration into the immediate environment".²⁹⁸ However, since the requirement of the distinctive sign is to identify the wearer as a combatant, the wearing of uniforms by the Palestinians, although not the same for all members, would satisfy this requirement. The uniform clearly identifies the wearer as a combatant.

Under Article 4 resistance forces must carry their arms openly but this does not mean they must always carry arms or that such arms must always be visible. For example, a hand-grenade or a revolver may be carried in a pocket or under a coat and the requirement of carrying arms openly is still satisfied.²⁹⁹

The only remaining requirement the Palestinian combatants would have to satisfy is to conduct their operations in accordance with the laws and customs of war. In this regard,

partisans are required to apply the 1949 Geneva Conventions, be guided by general moral criteria respecting humanitarian principles of not causing undue suffering in proportion to military objectives, and not to attack civilians and other unarmed persons.³⁰⁰ Although both the Israelis and the Palestinians claim the other side violates this standard, and these claims will be examined later, the acceptance and application of them by the Palestinians would satisfy this requirement for the future.

Therefore, if the Zionist claims concerning the Palestinian combatants are accepted it would appear that those individuals are entitled to prisoner of war status upon detention by Israeli authorities. However, these claims are based on the assumption that the Palestinians are not an independent participant in the Middle East coercion situation, and are controlled and directed by the Arab states. They also assume that the Palestinian combatants are to be considered resistance forces as that term is used in Article 4 of the 1949 POW Convention.

It is submitted that both of these assumptions are incorrect and it is generally inappropriate to classify the Palestinian combatants as partisans or resistance fighters. The independence of the Palestinian people as a separate participant in the Arab hostilities with Israel has previously been discussed,³⁰¹ so that it is illogical to conclude they are fighting on behalf of the Arab states. They are clearly

fighting for themselves and their own objectives. Accordingly, they are fighting on behalf of a party to an international coercion situation which is not a state or a High Contracting Party within the meaning of the first paragraph of Article 2, but rather on behalf of a "Power" within the meaning of the third paragraph of Article 2.

Additionally, the nature of their activities and organization does not support a conclusion that they are partisans as contemplated by Article 4 of the 1949 POW Convention. That Article contemplated combatants who are primarily civilians and who engage in hostilities on a limited basis within occupied territories, although it is applicable both within and without occupied territories.³⁰² The great bulk of the Palestinian combatants are organized into regular military units that do not resemble in any manner the partisan or resistance organizations that existed in occupied Europe during World War II. Al-Fatah, under the leadership of Yasser Arafat, who is also the President of the Executive Committee of the Palestine Liberation Organization,³⁰³ is the dominant Palestinian military organization and presently has a full-time army of 40,000 men,³⁰⁴ based primarily in Jordan. Accordingly, it is suggested that these combatants are not partisans as contemplated by Article 4 but are, in fact, regular armed forces of an independent participant in the Middle East coercion situation.

This is not to suggest that there are no Palestinian

combatants that can not be regarded as partisans and entitled to be classified as prisoners of war upon detention by the Israelis. There are no doubt certain groups of individuals within Israel and the occupied territories, or who infiltrate into these areas, that are in fact partisans or resistance fighters within the meaning of Article 4 of the POW Conventions. Provided these individuals satisfy the four criteria set forth they are entitled to prisoner of war status upon detention. However, what is suggested is that the great majority of the Palestinian combatants more resemble regular armed forces as contemplated by Article 4, in that they operate in military units, openly and from outside the territory controlled by Israel.

B. MEMBERS OF THE ARMED FORCES AS PROTECTED COMBATANTS.

This is the first category of protected combatants under Article 4A (1), which provides, "Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming a part of such armed forces."³⁰⁵ Included within this category are all members of the armed forces, land, sea and air, of the enemy who fall under the power of a participant in the conflict.³⁰⁶ It is contemplated that these individuals will be members of the regular armed forces fighting on behalf of a state since the International Red Cross Commentary on the 1949 POW Convention provides that

(i)t is the duty of each State to take steps so

that the members of its armed forces can be immediately recognized as such and to see to it that they are easily distinguishable from members of the enemy armed forces or from civilians.³⁰⁷

One might initially react that the Israeli armed forces satisfy these conditions and its individual members are entitled to prisoner of war status upon detention by the Palestinians, and that the Palestinian combatants do not in that they are not fighting on behalf of a state. It is suggested that the individual combatants of neither of these participants are entitled to prisoner of war status under this category because an additional requirement for its applicability is that the armed forces must belong to "...a Government whose legal status is not contested by the other Party".³⁰⁸

This additional qualification is of particular relevance to the Israeli/Palestinian people coercion situation since neither participant recognizes the legal status of the other. Prime Minister Meir of Israel has recently stated that there is no such entity as either a Palestinian nation or people,³⁰⁹ and the government of Israel denies that the Palestinian people are a separate entity under international law or that they are entitled to the status of a subject of that law.³¹⁰ At the same time, the entire Palestinian people's program for the liberation of Palestine, the elimination of Zionism and the establishment of a secular state, is based on the contention that Israel was illegally created.³¹¹

Accordingly, this qualification of mutual recognition between participants in an international coercion situation must result in the conclusion that the individual combatants of neither are not entitled to prisoner of war status upon detention under this provision of Article 4. However, the drafters of the Article, based on the experience of World War II, provided for such an eventuality in the third category of combatants entitled to prisoner of war status under the 1949 POW Convention.

C. MEMBERS OF THE REGULAR ARMED FORCES WHO PROFESS ALLEGIANCE TO AN AUTHORITY NOT RECOGNIZED BY THE DETAINING POWER AS PROTECTED COMBATANTS.

Article 4A (3) of the 1949 POW Convention provides that protected combatants are "Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power."³¹² This category was included in Article 4 because

(d)uring the Second World War, certain States refused to recognize as belligerents combatant units which professed allegiance to a Government or authority which these States did not recognize.³¹³

One of these groups of combatants during World War II was the French followers of General de Gaulle who operated from England after the German occupation of France and which were treated as prisoners of war upon capture only because the Germans considered that they were fighting on behalf of England.³¹⁴

It is evident to anyone familiar with both situations that the Palestinian people of 1970 closely resemble the Free French Forces under General de Gaulle of the 1940's. Both entities lost their state through the result of conquest by a foreign state and thereafter began a campaign to liberate their state from the territory of third states. It is this type of coercion situation that this provision of Article 4 was designed to encompass.

What is required is that the combatants be members of regular armed forces which differ from those combatants of mutually recognized participants in only one respect: "...the authority to which they profess allegiance is not recognized by the adversary as a Party to the conflict".³¹⁵ Regular armed forces in both these categories must satisfy three criteria, they must wear uniforms, have an organized hierarchy, and know and respect the laws of war.³¹⁶

Paragraph A(3) of Article 4 specifically provides that these armed forces must profess allegiance to "a government or an authority"³¹⁷ and, therefore, they do not have to be fighting on behalf of a recognized or existing state, but simply "an authority". However, the authority on behalf of which they are fighting should be recognized by some states or third parties, but does not have to be recognized by the Detaining Power.³¹⁸

This category of combatants do not have to be fighting on behalf of one of the High Contracting Parties to the 1949 POW Convention³¹⁹ and this provision is therefore closely

related to the third type of coercion situation in Article 2 in which one of the participants in an international coercion situation is not a party to the Convention.³²⁰ All that is required in this situation is that the authority must accept and apply the provisions of the Convention.³²¹

How then does this category of combatants apply to the Israeli/Palestinian people coercion situation? Since neither participant recognizes the legal status of the other, their combatants appear initially to be within this category. The Israeli armed forces are fighting on behalf of a government, although not recognized by the Palestinian people, which is recognized by numerous states and is a member of the United Nations. They also wear uniforms and have an organized hierarchy and, therefore, would be within the provisions of this category and entitled to the protections of the 1949 POW Convention provided they accept and apply the laws of war, including the 1949 Geneva Conventions.

At the same time the Palestinian combatants are fighting on behalf of an authority which is recognized by third parties, namely the Arab states as evidenced by the membership of the Palestine Liberation Organization in the Arab League,³²² and the refusal of Israel to recognize this authority as an independent participant in the Middle East coercion situation is of no effect. The Palestinian combatants also wear uniforms, as evidenced by the statement of Ambassador Takoah,³²³ and have an organized hierarchy, as evidenced by the Palestine

Liberation Organization and its various organs.³²⁴ Again, all that remains is that they accept and apply the laws of war, including the 1949 Geneva Conventions.

D. CONCLUDING APPRAISAL OF THE APPLICABILITY OF THE 1949 POW CONVENTION.

The catagories of protected combatants that are presently taking part in the Israeli/Palestinian people coercion situation can be classified as partisans and regular armed forces. Although some can be so regarded generally most of the Palestinian combatants can not be classified as partisans because they do not possess the contemplated characteristics. Rather, they resemble regular armed forces as do the Israeli combatants.

However, those Palestinian combatants that are partisans as contemplated by Article 4A (2) should be treated as prisoners of war upon detention by Israeli authorities provided they satisfy the four requirements previously discussed. At the same time, the majority of the Palestinian combatants and the Israeli combatants are entitled to prisoner of war status upon detention by the enemy since they are within the definition of regular armed forces and are fighting on behalf of an authority or government not recognized by the other belligerent. Therefore, all the combatants in the Israeli/Palestinian people coercion situation should be treated as prisoners of war upon detention by the enemy and

both participants should formally agree to accept and apply the protections of the 1949 POW Convention to the other's combatants.

The frequent failure of both participants in the Israeli/Palestinian people coercion situation to accept and apply the laws of war and the 1949 Geneva Conventions will be fully discussed in the concluding sections of this study. This should, of course, be a reciprocal acceptance and application if the purposes of the 1949 Geneva Conventions are to be effectuated. Those purposes of balancing military necessity with humanitarianism are particularly relevant to detained combatants.

Since prisoners of war constitute bases of enemy power already effectively neutralized by capture, the further direct application of violence against them would result in a destruction of values without military significance.³²⁵

Accordingly, there can be no claim of military necessity sufficient to justify the failure to accord protected combatants the protections of the 1949 POW Convention.

VI. THE INDIVIDUALS ENTITLED TO THE STATUS OF "PROTECTED PERSONS" IN THE ISRAELI / PALESTINIAN PEOPLE COERCION SITUATION.

Article 4 of the 1949 Civilians Convention determines which individuals are entitled to its protections when they are affected by an international coercion situation within the provisions of Article 2. These individuals are referred to as "protected persons" and can reside either in the territory of an enemy belligerent or in occupied territories.³²⁶ Therefore, in the context of the Israeli/Palestinian people coercion situation the juridical status of the various territories under Israeli control is relevant to any determination of whether the civilians residing therein are "protected persons" and to which protections of the Convention they are entitled.³²⁷

When the 1949 Civilians Convention is considered, Israel must be regarded as a belligerent occupant in all of the territory it occupied during the Six-Day War in June, 1967.³²⁸ This territory includes the West Bank, the Gaza Strip, the Golan Heights, the old city of Jerusalem and the Sinai Peninsula.³²⁹ In addition, there are some juridical bases that support an argument that Israel should be regarded as a belligerent occupant in all of the territory occupied in 1948-1949 in excess of that allotted to the Jewish state under the United Nations Partition Plan.³³⁰ However, in the analysis of the applicability of the 1949 Civilians Convention this

territory will be considered as within the international boundaries of Israel.

Since it has already been concluded that the 1949 Civilians Convention should be applied by the participants in the Israeli/Palestinian people coercion situation,³³¹ the consideration in this section will focus on whether it has been applied in the past and which individuals are entitled to the status of protected persons. However, before proceeding to such a consideration it should be pointed out that under international law and the provisions of the 1949 Civilians Convention, any attempts by Israel to alter the status of the occupied territories can have no effect on the applicability of the Convention.

International law, as previously discussed, does not recognize a change in status of occupied or conquered territories through annexation or subjugation until there has been either a treaty of peace or a general cessation of hostilities.³³² Since neither has taken place in the Middle East coercion situation since June, 1967, the Israeli attempts to annex parts of the occupied territories are of no effect for "...calling an occupation by the name of subjugation will not avail the occupant (of) a means of evading the obligations of an occupant imposed by international law".³³³ Accordingly, Israel must be regarded as a belligerent occupant in all of the territory occupied during the Six-Day War and must apply the international laws of war regarding a belligerent occupation

to that territory.

This rule is also expressed in Article 47 of the 1949 Civilians Convention which provides:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.³³⁴

This Article recognizes the international rule that an Occupying Power can not annex occupied or conquered territory as long as the hostilities continue³³⁵ and sets forth the fundamental principle that

...an Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory.³³⁶

It is clear, therefore, that under both international law and the 1949 Civilians Convention, Israel can not avoid the prescriptions of the Convention by claiming that it has annexed part of the occupied territories.

A. AN INQUIRY INTO THE APPLICABLE PROVISIONS OF THE 1949 CIVILIANS CONVENTION.

Prior to discussing which individuals are entitled to the

status of protected persons under Article 4 certain protections extended by the 1949 Civilians Convention will be considered. It is the purpose of this inquiry to demonstrate that neither participant in the Israeli/Palestinian people coercion situation have absolutely applied the protections of the 1949 Civilians Convention and the laws of war to civilian persons. Accordingly, both belligerents have failed to comply with the various United Nations Resolutions recommending that they apply the Convention to protected persons,³³⁷ and have ignored the humanitarian principles of the laws of war.

The violations by the Palestinian people are evident from the various attacks on Israeli citizens, especially the recent attack on the Israeli school bus in which eleven children and teachers were killed and twenty injured.³³⁸ This attack, for which the Popular Front for the Liberation of Palestine took credit,³³⁹ was clearly a violation of the laws of war forbidding attacks on unarmed civilians.³⁴⁰ Similar attacks on tourist buses carrying foreign nationals and resulting in deaths and injuries³⁴¹ are equally violative of the laws of war.

It appears that these attacks are an expression of the official policy of the Popular Front for the Liberation of Palestine, and other splinter organizations which expounds terror tactics against civilians, including children.³⁴² Rocket attacks on civilian settlements within Israel,³⁴³ and attacks on Israeli civilian airplanes and the bombings of El Al airline offices in foreign states³⁴⁴ are further expressions

of this policy. At the same time, the Palestinian hijackings of civilian airlines and the detention of Israeli hostages to be returned for captured Palestinian combatants is clearly a violation of Article 34 which provides, "(t)he taking of hostages is prohibited."³⁴⁵

It should be noted, however, that the Palestine Liberation Organization claims that these incidents were the action of splinter groups and do not represent the policy or the operations of the great majority of the Palestinian people. While deploring such attacks, the P.L.O. claims that its combatants limit their operations to military targets within Israel and the occupied territories, and do not attack civilians.³⁴⁶ Such claims raise the issue of whether the dominant guerrilla forces should be held responsible for such attacks as evidence that the Palestinian people have not accepted and applied the 1949 Geneva Conventions and the laws of war.

Since the purpose of the laws of war and particularly the 1949 Geneva Conventions is to extend humanitarian protections to all war victims,³⁴⁷ it is suggested that the responsibility for these violations must rest on the entity that has been identified as the Palestinian people. One could easily conclude that such responsibility should not be so placed by arguing that the aforementioned violations were the actions of splinter groups that have been excluded from the dominant Palestinian organization, the P.L.O. It could also be argued that since not all but only most of the members of guerrilla

organizations must observe the laws and customs of war to enjoy the protections of the 1949 Geneva Conventions,³⁴⁸ that the violations by splinter groups do not affect the general application of the Conventions.

However, such arguments merely avoid the issue and would result in further violations by splinter groups of the laws of war and the Conventions. Past experience has shown that the Israelis will not ignore such actions but will respond by attacking civilian targets in reprisal.³⁴⁹ The result is that further violations occur and the purpose of the laws of war and the Conventions is not given effect. Accordingly, rather than excuse the Palestinian people for the conduct, the efforts of the international community must be directed towards seeking compliance by all the Palestinian people, as well as the Israelis, with the applicable laws of war.

There is also considerable evidence that Israel has also violated the 1949 Civilians Convention and the laws of war since the Six-Day War, as noted in various United Nations Resolutions.³⁵⁰ The steps taken by Israel to annex the old city of Jerusalem previously discussed³⁵¹ are clearly a violation of Article 47 of the Convention which prohibits annexation, as do the rules of international law.³⁵² In addition the steps taken since this illegal annexation to expropriate and destroy the property of the Arab residents of the old city are clearly a violation of Article 53 since such action took place after the hostilities of June, 1967, had ceased and military necessity

was not a valid claim.³⁵³ Article 53 provides:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.³⁵⁴

However, the most evident violations of the 1949 Civilians Convention are those involving collective punishments which are prohibited by Article 33, which provides:

No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.³⁵⁵

Since the June, 1967, Six-Day War, Israel has continually violated Article 33 and defended its actions with the claim that they are in retaliation for acts of terror. Initially Israeli forces blew up the homes of those Arabs within the occupied territories who were suspected of being members of the Palestinian guerrilla groups or giving them assistance. This was referred to as a policy of counter-terror, not collective punishments, and supposedly affected only those persons collaborating with or belonging to the Palestinian groups and not the non-members or non-collaborators.³⁵⁶

However, the policy of blowing up the homes of only active guerrillas and those aiding them was not effective and a new

policy consisting of large-scale home demolitions within the occupied territories was instituted. Israel's Defense Minister says this policy is the most effective way of discouraging the people from protecting the guerrillas³⁵⁷ and that it consists of "...demolishing the homes of Arabs who had been uncooperative in investigations of terrorism or who had declined to furnish information", whereas, "(p)reviously demolition was limited to the homes of those actually engaged in terrorism".³⁵⁸

Defense Minister Dayan claims that this new policy does not constitute collective punishment but rather neighborhood punishment. In explaining the policy of neighborhood punishment he has said, "(t)oday we are not only punishing individuals who commit crimes, but also those around them who in silent knowledge of what is afoot, fail to alert the authorities".³⁵⁹ He has also indicated that Arabs who fail to cooperate will be deported.³⁶⁰

The Israeli policy of neighborhood punishments has also been clarified by General Shlomo Gazit, who is responsible for coordinating activities within the occupied areas. He explained that neighborhood punishment is not arbitrary since the Israelis "...are not hitting anyone who is really innocent... (and) punish only those people we are definitely sure were involved in actively cooperating and in helping the terrorists".³⁶¹

Resulting from the Israeli policy of neighborhood punishments has been torture and deportations as well as the destruction of an estimated 7,140 Arab homes as of October, 1969, including entire villages, because "...someone suspected

of connexion with guerrilla activity was living in them".³⁶² It has also been used in the form of a 24 hour a day curfew in which Arabs in the West Bank are not permitted outside their homes to shop or to use their outdoor latrines for periods up to a week at a time.³⁶³

These activities by the Israelis within the occupied territories clearly violate not only Article 33 but also Article 49, prohibiting deportations,³⁶⁴ Article 27, forbidding inhumane treatment,³⁶⁵ and Article 31, prohibiting coercion to be used in gaining information.³⁶⁶ They are mentioned not to sustain a claim that the Israelis violate the 1949 Civilians Convention while the Palestinian people obey its provisions, but to demonstrate that contrary to popular belief both participants have been guilty of conduct that violate the humanitarian provisions of the Convention and of the absolute necessity to ensure compliance with its provisions at the earliest possible date.

These violations by one participant normally result in a violation by the other and are, therefore, not only breaches of the 1949 Civilians Convention, but also counter-productive. When one participant breaches the applicable laws of war, the other responds in like manner, with the resulting war victims caught in the middle. The issue remains, however, as to which of the affected individuals are entitled to the status of protected persons under the Convention.

B. PROTECTED PERSONS WITHIN ARTICLE 4.

Article 4 of the 1949 Civilians Convention provides in part:

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it....³⁶⁷

The remainder of the Article deals with nationals of neutral and co-belligerent states and persons within the protection of one of the other 1949 Geneva Conventions, and provides that these individuals are not entitled to the protections of the 1949 Civilians Convention.³⁶⁸

Basically two classes of civilian persons were deemed to need the protection of the Civilians Convention by its drafters; first, "...persons of enemy nationality living in the territory of a belligerent State," and second "...the inhabitants of occupied territories".³⁶⁹ Accordingly, the provisions of Article 4 extend the protection of the 1949 Civilians Convention to "...those civilians who, 'at a given moment and in any manner whatsoever', find themselves in the event of a conflict or occupation in the hands of a party to the conflict or occupying power of which they are not nationals."³⁷⁰

At first glance, Article 4 does not clearly appear to provide that these civilian persons are entitled to the

status of protected persons, but it is now agreed that the Civilians Convention applies in the territory of a belligerent state to all "...persons of foreign nationality and to persons without any nationality" and in occupied territories "...to all persons who are not nationals of the occupying State."³⁷¹

The only relevant exceptions to this coverage are "(n)ationals of a State which is not bound by the Convention" and persons protected by one of the other 1949 Geneva Conventions.³⁷²

Thus the Civilians Convention "...is intended to cover anyone who is not a national of the Party to the conflict or Occupying Power in whose hands he is".³⁷³ Stateless persons are included within the protections of the Convention because

(t)he negative form of the phrase in the hands of a (party to the conflict or occupying) Power of which they are not nationals makes... stateless persons,... not being nationals of the Detaining or Occupying Power ... ipso jure protected persons.³⁷⁴

How, then, do these provisions relate to the Israeli/Palestinian people coercion situation so as to determine which individuals are entitled to be considered protected persons under the Civilians Convention? Basic to any consideration of this nature is the status of the territory in which the war victims are located. Since the Convention distinguishes between the territory of a belligerent state and occupied territories³⁷⁵ such a distinction must also be made in the Israeli/Palestinian people coercion situation.

The provisions of the Convention relating to aliens in the territory of a party to the conflict³⁷⁶ must be considered

applicable within all areas in which Israel is recognized as the de jure sovereign and within its pre-June 1967 boundaries. Accordingly, it would appear that all the Palestinian people who are not Israeli nationals within this territory are entitled to be considered protected persons because they are in the territory of a belligerent state of which they are not nationals. Since most of these individuals are in fact stateless persons the protections of the Convention would definitely extend to them and also to the Palestinian people who have acquired Jordanian nationality since Jordan is a Party to the Convention.³⁷⁷

At the same time the provisions of the Convention dealing specifically with occupied territories³⁷⁸ must be considered applicable within the territories occupied by Israel during the Six-Day War. Thus, it would appear that all the Palestinian people within these territories are entitled to be classified as protected persons in that they are inhabitants which are not nationals of Israel.³⁷⁹ In this regard, occupied territories must be considered as those areas in which the state or power in control does not have, under international law, the right of de jure sovereignty.³⁸⁰ The fact that Israel can not be considered the de jure sovereign over any of the territory occupied during the June, 1967, Six-Day War, has previously been discussed³⁸¹ and, accordingly, all of these areas must be considered occupied territories within the meaning of the 1949 Civilians Convention.

This conclusion is based, of course, on the conclusion that Israel has never acquired the status of the de jure sovereign over any of the territory it occupied in June, 1967. However, even if Israel has become in fact and law the de jure sovereign over any or all of this territory the provisions relating to enemy aliens in the territory of a party to the conflict would be applicable, for then it would be the territory of a belligerent state.³⁸² In this event, the provisions of Article 4 regarding persons of enemy nationality and stateless persons³⁸³ would be applicable, and any Palestinians within these areas would still be regarded as protected persons.

It would also appear that the Israeli nationals who find themselves within the control of the Palestinian people outside the territory of Israel are also entitled to the status of a protected person. Although there is at present no Palestinian state and one might argue that these Israeli citizens are therefore not in the territory of a belligerent state, for example if they were detained in Turkey, the general purpose of the Convention as evidenced by Article 4 would apply to such individuals. That purpose is to extend the protections of the convention to all individuals in the hands of a power of which he is not a national or to which he does not profess allegiance.³⁸⁴ Israeli citizens or nationals detained by the Palestinian people would clearly come within that purpose.

C. CONCLUDING APPRAISAL OF THE APPLICABILITY OF THE
1949 CIVILIANS CONVENTION TO THE ISRAELI/PALESTINIAN
PEOPLE COERCION SITUATION.

The conclusions reached in this section are based to a large extent on the applicability of Article 2 of the 1949 Geneva Conventions to the Israeli/Palestinian people coercion situation. That Article's applicability is dependent on both participants accepting and applying the provisions of the Convention to bring its civilians within the status of protected persons under Article 4. In the past there have been violations of specific provisions of the Convention by both belligerents, however, these past violations would not prevent the Convention from being applicable in the future.

The prospects and necessity for all participants to accept and apply the 1949 Geneva Conventions will be discussed in the next section of this study. Suffice to say at this point that this requirement is the only possible reason why both belligerents are not bound to afford civilians under their control the applicable protections of the 1949 Civilians Convention.

It should also be noted that the status of protected persons under the 1949 Civilians Convention is closely related to the status of prisoners of war under the 1949 POW Convention. Prisoners of war in either the territory of an enemy state or in occupied territories are not entitled to the protections of the 1949 Civilians Convention,³⁸⁵ but rather to the more

extensive protections of the 1949 POW Convention. However, combatants who do not fall within the status of prisoners of war are still entitled to the protections of the 1949 Civilians Convention.³⁸⁶ This is emphasized by the International Red Cross Commentary which provides:

Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, or again, a member of the medical personnel of the armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands can be outside the law.³⁸⁷

Thus, for example, the regulations governing the treatment of interned persons³⁸⁸ must be applied to detained combatants who are not entitled to prisoner of war status under Article 4 of the 1949 POW Convention. This is in keeping with the purpose of the Conventions of extending humanitarian protections to all war victims under one of the four 1949 Geneva Conventions. It is for this reason that immediate action should be taken by the international community to seek compliance with the provisions of these Conventions by both participants in the Israeli/Palestinian people coercion situation.

VII. CONCLUDING APPRAISAL AND RECOMMENDATIONS.

This study has been an inquiry into the applicability of the international laws of war, specifically the 1949 POW and Civilians Conventions, to a coercion situation of international character in which one of the participants is not a state. That participant has been identified as the Palestinian people which as an independent entity with its effective military and political influence might well determine the destiny of the entire Middle East. However, this aspect of the significance of the Palestinian people as a participant was not investigated but rather the immediate juridical issue to be resolved was whether in the hostilities between only Israel and the Palestinian people the resultant war victims are entitled to the protections of the 1949 Geneva Conventions. This necessitated an inquiry into whether the 1949 Geneva Conventions are applicable in a coercion situation of international character in which one participant is a nation-state and the other is a public organization independent of any nation-state.

A preliminary conclusion has been reached that these war victims, prisoners of war and civilian persons, should be entitled to the protections of the Conventions because the coercion situation between Israel and the Palestinian people satisfies the basic prerequisites of Article 2, and the affected individuals are within the categories specified by Article 4, of each Convention. Basically, a two-step analysis has been utilized in which it was concluded that

the coercion situation under inquiry was one of international character in which the international laws of war should be applicable and that the war victims are within those classes of individuals entitled to certain humanitarian protections envisioned by the rules of international law. The only possible reason that these humanitarian principles are not available for the protection of the resulting war victims is the failure of both participants to accept and apply the provisions of the Conventions and the laws of war.

Article 2 of the 1949 Geneva Conventions provides that they are applicable to international coercion situations in which the participants are a High Contracting Party and a non-signatory Power, provided the latter agrees to accept and apply their provisions. Although in the Israeli/Palestinian people coercion situation the non-signatory Power, the Palestinian people, is not a state and international law is normally applicable only between states,³⁸⁹ the general purpose of the Conventions requires that they be applied by both participants. That purpose is to extend to all war victims resulting from international coercion the humanitarian principles that are embodied in the Conventions. It can be achieved in this instance only if the Conventions are applied by the participants even though one of them is not a nation-state.

However, even though the conclusion has been reached that the 1949 POW and Civilians Conventions should be applied by the participants in the Israel/Palestinian people coercion situation

there is considerable evidence that neither has absolutely accepted and applied their provisions in the past. Certain Palestinian groups have engaged in a terror campaign in which civilians are the primary targets and which resembles the Zionist terror campaign of 1948-1949. At the same time the Israelis have violated the Conventions within the occupied territories. Resulting from these activities has been the unnecessary and unproductive destruction of values and a continuing deterioration of the entire Middle East coercion situation. They have also given rise to the claim that since the other belligerent has not accepted and applied the provisions of the 1949 Geneva Conventions, as required by Article 2, the claimant is not obliged to do so.

One method of avoiding this reciprocal acceptance and application of the provisions of the Conventions is to recognize them as customary international law. There is some evidence that they are regarded as such³⁹⁰ and therefore are applicable in a situation of international coercion irregardless of the attitudes and policies of the participants. Certainly, the humanitarian principles they embody are now recognized by the international community as minimum standards for the conduct of modern warfare and should be observed by all belligerents. Accordingly, it is suggested that the 1949 Geneva Conventions be treated as customary international law and that the appropriate international decision-makers take immediate action to seek compliance with their humanitarian provisions by both participants in the Israeli/Palestinian

people coercion situation.

In the past although the United Nations and the various states that are directly or indirectly involved in the Middle East crises have occasionally condemned the violations of the Conventions by both Israel and the Palestinian people, they have concentrated most of their efforts on finding an overall solution to the continuing coercion situation. At the same time the violations of the Conventions have continued, their humanitarian purposes have been ignored on a daily basis and the associated destruction of values has increased.

It is suggested that this approach in attempting an overall solution has been and will be ineffective and that the acceptance and application of the 1949 POW and Civilians Conventions by all the participants including Israel and the Palestinian people, should be the first step that must be taken in successfully resolving the Middle East crises. This suggestion is based on the belief that unless a minimum destruction of values is recognized and promoted during periods of armed conflict the level of coercion will gradually increase along with increased destruction of values until the solution of the underlying causes of the hostilities can no longer be reached in a peaceful manner but only through continued coercion. In the case of the Israeli/Palestinian people coercion situation this must necessarily mean the complete destruction of one of the participants.

This stage of the Middle East coercion situation has not

yet been reached but is becoming more evident in the statements of the leaders of both the Palestinian people and Israel. Thus, it is time to change directions and begin a step by step process that will lead to a resolution of the underlying causes of the conflict and to the establishment of a minimum system of world public order in the entire Middle East.

Accordingly, it is suggested that the United Nations and the world community of states direct their immediate efforts at resolving the Middle East crises towards gaining the consent of all the participants, particularly the Palestinian people and Israel, to apply the provisions of the 1949 POW and Civilians Conventions. The United Nations has in the past condemned Israel for its alleged violations but has ignored the violations of the Palestinian people. It is suggested that this trend be changed and that the world organization seek compliance by all participants with the Convention's humanitarian provisions. At the same time the United States as the principal supporter and supplier of Israel should seek Israeli compliance.

This study was intended as an inquiry into the applicability of the 1949 POW and Civilians Conventions to the Israeli/Palestinian people coercion situation. What is important in this conflict to this writer is not which participant is right or wrong, justified or unjustified, but rather whether the resultant war victims are enjoying the humanitarian protections of international law to which they are entitled. It is clear that in the past this has not been

the case and that there has been an unnecessary destruction of values which can not in any manner be justified under a claim of military necessity. Only if all involved participants agree to accept and apply the applicable laws of war can this destruction be significantly decreased and further steps be taken to resolve the underlying causes of the conflict in a peaceful manner. The alternative is a continuing destruction of values, further escalation of the hostilities, and no solution to the crises in the foreseeable future.

FOOTNOTES

1. United Nations Security Council Res. 237 (1967) of June 14, 1967, reprinted in Arab World, Dec. 1969-Jan. 1970, at 5.
2. 6 U.S.T. 3316, T.I.A.S. No. 3364.
3. 6 U.S.T. 3516, T.I.A.S. No. 3365.
4. See McDougal and Feliciano, Law and Minimum World Public Order, The Legal Regulation of International Coercion 521-522 (1961) (hereinafter cited as McDougal).
5. Throughout this study the words "state" and "states" will frequently not be capitalized because of the writer's belief in the decline of importance of the nation-state in international law.
6. See for example General Assembly Res. 2252 (ES-V) of July 4, 1967, General Assembly Res. 2341 (XXII) of Dec. 19, 1967, Security Council Res. 259 (1968) of Sept. 27, 1968, General Assembly Res. 2443 (XXIII) of Dec. 19, 1968, all reprinted in Arab World, Dec. 1969 - Jan. 1970, at 7-12 and General Assembly Res. 2535 (XXIV) of Dec. 10, 1969, U.N. Doc. A/RES/ 2535 (XXIV) (Dec. 18, 1969).
7. Time, May 11, 1970, at 43.
8. Harkabi, Fadayeen Action and Arab Strategy 35 (1968) (a pamphlet published by the Institute for Strategic Studies, London) (hereinafter cited as Harkabi).
9. 6 U.S.T. 3514-3515, 3694-3695.
10. If the Palestinian people are fighting on behalf of the Arab states the requirements of Article 2 would be satisfied since all of the adjacent Arab states and Israel are High Contracting Parties and under Article 4 the Palestinians would be fighting on behalf of a "Party to the conflict", namely the Arab states.
11. See Blum, "The Missing Reversioner: Reflections on the Status of Judea and Samaria", 3 Israel Law Review 279 (1968) (hereinafter cited as Blum).
12. Lenczowski, The Middle East in World Affairs 316 (2 ed., 1958) (hereinafter cited as Lenczowski).

13. Id., Appendix Table VI, at 547.
14. Article 22, paragraph 4 of the League of Nations Covenant provided:

"Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone..." Sohn, Basic Documents of the United Nations 302 (1968).

Article 2 of the League of Nations Mandate for Palestine made the mandatory power, Great Britain,

"...responsible for placing the country under such political, administrative and economic conditions as will secure ... the development of self-governing institutions, ... 44 Stat. 2185.

15. Lenczowski, supra note 12, at 96.
16. Article 7 of the League of Nations Mandate for Palestine provided:

"The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine." 44 Stat. 2186.
17. Herzl, The Jewish State (1896), reprinted in Laqueur, The Israel-Arab Reader 9 (1969) (hereinafter cited as Laqueur).
18. Lenczowski, supra note 12, at 312-313.
19. Laqueur, supra note 17, at 11.
20. Lenczowski, supra note 12, at 78.
21. Id. at 77 (footnote omitted).
22. Laqueur, supra note 17, at 18.
23. 44 Stat. 2184.
24. See the State of Israel Proclamation of Independence, Laqueur, supra note 17, at 125 and Badi, The Fundamental Laws of the State of Israel 8 (1961) (hereinafter cited as Badi).

25. Id.
26. Cattan, "To Whom Does Palestine Belong?", 45 Middle East Forum 117, 118 (1968) (hereinafter cited as Cattan).
27. It has been estimated that out of the total 1970 Jewish population in the United States of 6,000,000 that only 750,000 are Zionists. The National Observer, May 18, 1970.
28. Lenczowski, supra note 12, at 314.
29. Id. at 314-315 (footnotes omitted).
30. Id. at 315.
31. Laqueur, supra note 17, at 28.
32. These rights were to be protected by the so-called safeguard clauses of the Balfour Declaration with provided "...that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine" Laqueur, supra note 17, at 18.
33. Referring to the language of the Balfour Declaration.
34. Id.
35. Laqueur, supra note 17, at 29.
36. Id. at 29-30.
37. Berger, "Problems of American Policy-Makers in the Middle East", 45 Middle East Forum 61, 74-75 (1968).
38. Report of the United Nations Special Committee on Palestine, Laqueur, supra note 17, at 108.
39. Id. at 109.
40. Id. at 110.
41. Id. at 111.
42. Id. at 112.
43. 1947-1948 Yearbook of the United Nations 247 (1949).
44. The entire resolution is found in 1947-1948 Yearbook of the United Nations 247-256 (1949).
45. Leonhard, "The Truth About the Palestine Problem", Selected Essays on the Palestine Question 9, 29 (Al-Abid

ed., 1969) (published by the Palestine Liberation Organization Research Center, Beirut).

46. Lenczowski, supra note 12, at 336.
47. See the State of Israel Proclamation of Independence, Laqueur, supra note 17, at 125 and Badi, supra note 24, at 8.
48. Lenczowski, supra note 12, at 337.
49. Holden, "The Fifty-Year Hate", 45 Middle East Forum 35, 40 (1968).
50. Faris, "War and Peace in the Middle East: The Present Situation and Future Prospects", 45 Middle East Forum 43, 46 (1968) (hereinafter cited as Faris).
51. Nutting, "The Tragedy of Palestine from the Balfour Declaration to Today", 45 Middle East Forum 25, 28 (1968).
52. United Nations Relief and Works Agency for Palestine Refugees in the Near East.
53. Davis, "Why Are There Still Arab Refugees?", Arab World, Dec. 1969 - Jan. 1970, at 4 (hereinafter cited as Davis).
54. Under the United Nations Partition Plan the proposed Jewish State would have had a population of 498,000 Jews and 497,000 Arabs. Faris, supra note 50, at 46.
55. Davis, supra note 53, at 4.
56. Childres, The Other Exodus (1961), reprinted in Laqueur, supra note 17, at 143, 145.
57. Id. at 147.
58. Id. at 148.
59. Jiryus, The Arabs in Israel 91 (1968) (published by the Institute for Palestine Studies, Beirut).
60. Lenczowski, supra note 12, at 337-338.
61. 1948-1949 Yearbook of the United Nations 184 (1949) and 42 U.N.T.S. 250 (1949).
62. 1948-1949 Yearbook of the United Nations 185 (1949) and 42 U.N.T.S. 287, 303 and 327 (1949).
63. Douglas-Home, The Arabs and Israel 38 (1968).

64. Koch, Six Hundred Days, A Reappraisal of the Arab-Israeli Confrontation Since June 1967, 49 (1969) (hereinafter cited as Koch).
65. Davis, supra note 53, at 4.
66. Childres, The Other Exodus (1961), Laqueur, supra note 17, at 150.
67. In 1967 the number of Palestinian refugees was estimated at 1,300,000, with an estimated 700,000 in Jordan (400,000 of which lived in the West Bank area), 300,000 in Gaza, 160,000 in Lebanon and 136,000 in Syria. Laqueur, The Road to Jerusalem 51 (1967). (These figures do not include those Palestinians who were self-sufficient and who were not classified as refugees).
68. The prerequisites of a state are 1) a permanent population, 2) a defined territory, 3) a government and 4) a capacity to enter relations with other states. See Convention on the Rights and Duties of States, Montevideo, 1933, 49 Stat. 3100, T.S. No. 881.
69. Hudson, "The Palestinian Arab Resistance Movement: Its Significance in the Middle East Crises", 23 Middle East Journal 291, 294 (1969) (hereinafter cited as Hudson).
70. Time, Sept. 19, 1969, at 30.
71. Id.
72. Hudson, supra note 69, at 291.
73. Sharabi, "The Palestinian Revolutionary Struggle", Arab World, May 1969, at 8 (hereinafter cited as Sharabi).
74. Harkabi, supra note 8, at 1.
75. Schleifer, "The Emergence of Fatah", Arab World, May 1969, at 16 (hereinafter cited as Schleifer).
76. Laqueur, The Road to Jerusalem 54 (1967).
77. Id. at 53.
78. Hudson, supra note 69, at 297.
79. Article 2, Laqueur, supra note 17, at 131.
80. Article 5, Id. at 131-132.
81. Article 7, Id. at 132.
82. Article 11, Id. at 133.

83. Article 14, Id.
84. Sharabi, supra note 73, at 7.
85. Life, Feb. 6, 1970, at 51.
86. Time, Sept. 19, 1969, at 30.
87. Hudson, supra note 69, at 298.
88. Id.
89. Washington Post, Feb. 27, 1970, at A 12, col. 2.
90. Hudson, supra note 69, at 298..
91. Id. at 292.
92. Schleifer, supra note 75, at 20.
93. Hudson, supra note 69, at 292.
94. See for example Washington Post, Oct. 23, 1969, at A 1, col. 1 and 4 and A 19, col. 1; Nov. 5, 1969, at A 1, col. 1 and A 8, col. 3; and Nov. 15, 1969, at A 26, col. 1 regarding Lebanon and Washington Post, Feb. 22, 1970, at A 16, col. 6 and 7; Feb. 23, 1970, at A 1, col. 8; and June 12, 1970, at A 1 col. 1 and Time, June 22, 1970, at 23 regarding Jordan.
95. Falk, "The Beirut Raid and The International Law of Retaliation", 63 A.J.I.L. 415, 425 (1969).
96. Washington Post, Nov. 9, 1969, at A 22, col. 1.
97. Id.
98. Washington Post, Nov. 11, 1969, at A 24, col. 2-3.
99. The Christian Science Monitor, Dec. 16, 1969, at 4.
100. Washington Post, Nov. 16, 1969, at A 29, col. 5.
101. "A Conversation with President Nasser" as interviewed by Rowland Evans and William Touhy, broadcast Feb. 8, 1970, on channel 5, WTTG, Washington, D. C. Resolution 242 also forms the basis of Secretary of State Rogers's recent peace proposal which has been accepted by Egypt, Washington Post, July 25, 1970, at A 1, col. 1 and July 26, 1970, at A 14, col. 2; Jordan, Washington Post, July 27, 1970, at A 1, col. 7; and Lebanon and five other less directly involved Arab states, Time, Aug. 10, 1970, at 14. Syria, Iraq, Algeria and the Palestinian people have rejected the peace proposal,

Washington Post, July 27, 1970, at A 1, col. 7 and Time, Aug. 10, 1970, at 14. "The Palestinian guerrillas have rejected the Security Council resolution, which they see as a threat to their aim of dissolving the state of Israel and replacing it with a multi-national Palestinian state." Washington Post, July 27, 1970, at A 12, col. 1.

102. "A Conversation with President Nasser" as cited in n. 101, supra.
103. United Nations Security Council Resolution 242 (1967), Principles for A Just and Lasting Peace, Nov. 22, 1967, reprinted in Staff of Senate Comm. on Foreign Relations, 91st Cong., 1st Sess., A Select Chronology and Background Documents Relating to the Middle East 262 (Comm. Print 1969) (hereinafter cited as 1969 Senate Report).
104. King Hussein indicated on Issues and Answers, ABC-TV, May 3, 1970, that he also supports Resolution 242 as the basis for a peaceful settlement of the Middle East coercion situation.
105. Hudson, supra note 69, at 305.
106. Sharabi, supra note 73, at 7.
107. Hudson, supra note 69, at 299 (emphasis added).
108. El-Fattal, "Palestine Liberation Movement", Arab World, May 1969, at 22.
109. Id. at 22-23.
110. Hudson, supra note 69, at 305.
111. Id. at 302 and Washington Post, Feb. 22, 1970, at A 16, col. 1.
112. Resolution 242 does not specify how this is to be accomplished but only provides "For achieving a just settlement of the refugee problem".
113. Sharabi, supra note 73, at 7.
114. Greenspan, The Modern Law of Land Warfare 217 (1959) (hereinafter cited as Greenspan).
115. G.A. Res. 181, U.N. Doc. A/519 at 133 (1948).
116. Official Records of the Ad Hoc Committee on the Palestinian Question, U.N.G.A., U.N. Doc. A/AC. 14/32 and Add. 1, Nov. 11, 1947, rept. of Sub-Comm. 2, appendix IV.

117. Official Records of the Ad Hoc Committee on the Palestinian Question, U.N.G.A., U.N. Doc. A/AC. 14/34 and Corr. 1 and Add. 1, Nov. 19, 1947, rept. of Sub-Comm. 1. annex 1. See also G.A. Res. 181, U.N. Doc. A/519, annex A (1948).
118. G.A. Res. 181, U.N. Doc. A/519 at 146 (1948).
119. Badi, supra note 24, at 9 (emphasis added).
120. See Declaration of the Establishment of the State of Israel, Id. at 8.
121. Some Arab and Palestinian writers conclude that even the Partition Resolution was of no legal effect because the United Nations, not possessing any rights of sovereignty over Palestine, could not grant any such rights to the Zionists in the form of a Jewish state. See Cattani, supra note 26, at 118.
122. Koch, supra note 64, at 49.
123. Blum, supra note 11, at 294.
124. G.A. Res. 181, U.N. Doc. A/519, annex A (1948).
125. Id. at 146.
126. See the 1949 General Armistice Agreements between Israel and Egypt, Lebanon, Jordan and Syria found in 42 U.N.T.S. 250, 287, 303 and 327 (1949). For example Article V, paragraph 2 of the Israeli-Egyptian Agreement provides:

The Armistice Demarcation Line is not to be construed in any sense as a political or territorial boundary, and is delineated without prejudice to rights, claims and positions of either Party to the Armistice as regards ultimate settlement of the Palestine question. 42 U.N.T.S. 256 (1949).
127. 1 Oppenheim, International Law sec. 220 at 507 (Lauterpacht ed., 1952).
128. Id. sec. 221 at 507.
129. Id. sec. 221 at 508.
130. Id. sec. 222 at 509.
131. What is referred to by some international writers as "belligerent occupation" is, under the traditional view, conquest followed by a military administration of the conquered territory. See McDougal, supra note 4, at 732.

132. See sec. II A supra.
133. A state must normally have a permanent population, a defined territory, a government and the capacity to enter relations with other states. See Convention on the Rights and Duties of States, Montevideo, 1933, 49 Stat. 3100, T.S. No. 881 and Kelsen, Recognition in International Law - Theoretical Observations, International Law in the Twentieth Century, The American Society of International Law 591-592 (1960).
134. See Blum, supra note 11, at 281-283 and the material cited therein.
135. This same conclusion has been reached by the Zionists regarding the West Bank. See Blum, supra note 11, at 283.
136. 1 Oppenheim, International Law, sec. 221 at 508 (Lauterpacht ed., 1952).
137. Id. sec. 236 at 518 (footnotes omitted).
138. McDougal, supra note 4, at 733.
139. Schwarzenberger, Title to Territory: Response to a Challenge, International Law in the Twentieth Century 293 (1960) (hereinafter cited as Schwarzenberger).
140. See Wright, "The Middle East Problems", 4 International Lawyer 364-367 (1970).
141. 1 Oppenheim, International Law sec. 239 at 521 (Lauterpacht ed., 1952) and McDougal, supra note 4, at 753.
142. McDougal, supra note 4, at 754.
143. See material cited in supra note 126.
144. 2 Oppenheim, International Law sec. 231 at 433-434 (Lauterpacht ed., 1944).
145. Schwarzenberger, supra note 123, at 291. Professor Wright has written, "It should be understood that Israel has no generally recognized boundaries beyond those provided in the original United Nations resolution of 1947. The armistice lines of 1949 and 1967 established merely cease-fire lines. The armistices of the 1949 have, however, served as de facto boundaries for twenty years and so have a somewhat different status from those of 1967." Wright, "The Middle East Problem," 64 A.J.I.L. 270, 277 (1970).

146. Rosenne, "Directions for a Middle East Settlement - Some Underlying Legal Problems", 33 Law and Contemporary Problems 44, 50 (1968).
147. Lenczowski, supra note 12, at 352.
148. Membership in the United Nations is open only to states. See U.N. Charter, art. 4, para. 1.
149. See for example Security Council Res. 242 (1967) of November 22, 1967, reprinted in 1969 Senate Report, supra note 103, at 262.
150. See the material cited in Wright, "The Middle East Problem", 64 A.J.I.L. 270, 275-276 and note 21 (1970) (hereinafter cited as Wright).
151. See Security Council Res. 242 (1967) of Nov. 22, 1967, reprinted in 1969 Senate Report, supra note 103, at 262.
152. 42 U.N.T.S. 250, 287, 303, and 327 (1949).
153. Lenczowski, supra note 12, at 376.
154. Blum, supra note 11, at 281.
155. Id. at 283.
156. U.N. Charter, art. 2, para. 4.
157. Blum, supra note 11, at 283.
158. Id. at 288.
159. Id. at 290.
160. See the material cited in supra note 141.
161. 1 Oppenheim, International Law sec. 241a at 524-525 (Lauterpacht ed., 1952).
162. McDougal, supra note 4, at 739.
163. 1 Oppenheim, International Law sec. 241a at 525 (Lauterpacht ed., 1952). See also 2 Oppenheim, International Law sec. 52j at 149 (Lauterpacht ed., 1944).
164. U.N. Charter, art. 2, para. 3.
165. 1 Oppenheim, International Law sec. 241a at 525 (Lauterpacht ed., 1952).
166. Goodspeed, The Nature and Function of International Organization 676 (1959).

167. Principle VI, Principles of International Law Recognized in the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal, 1950 A.J.I.L. Supp. 125, 130.
168. U.N. Charter, art. 51 (emphasis added).
169. Goodrich and Hambro, Charter of the United Nations 299 (1949).
170. See 1947-1948 Yearbook of the United Nations 416, 418 (1949).
171. Official Records of the Ad Hoc Committee on the Palestine Question, U.N.G.A., Summary Records of Meetings, at 123.
172. Id. at 16 (emphasis added).
173. Concerning the Zionist's territorial ambitions see also Leonhard, "The Truth About the Palestine Problem", Selected Essays on the Palestinian Question 9, 30-32 (Al-Abid ed., 1969) (published by the Palestine Liberation Organization Research Center, Beirut).
174. Blum, supra note 11, at 288.
175. 2 Whiteman, Digest of International Law 1163 (1963).
176. Id. at 1164.
177. Id. at 1164-1165.
178. Id. at 1165.
179. Id. at 1165-1166.
180. Id. at 1166.
181. Id. at 1166-1167.
182. See U.N. Charter, art. 1, para. 2.
183. Lenczowski, supra note 12, at 339.
184. See material cited in note 117 supra.
185. 2 Whiteman, Digest of International Law 1167-1178 (1963).
186. 1 Whiteman, Digest of International Law 274 (1963).
187. Id. at 276-277.
188. Koch, supra note 64, at 36.
189. N.Y. Times, Dec. 11, 1969, at 1, col. 2 (city ed.).

190. Id. at 8, col. 3-4.
191. G.A. Res. 2253 (ES-V), reprinted in Koch, supra note 64, at 37.
192. Koch, supra note 64, at 37.
193. Id. note 60.
194. Security Council Res. 252 (1968), reprinted in Koch, supra note 64, at 38-39.
195. Koch, supra note 64, at 45.
196. Id. at 57 (footnote omitted).
197. Blum, supra note 11, at 294.
198. Id. at 283.
199. Id. at 288.
200. Id. at 289.
201. Id. at 294.
202. 1 Oppenheim, International Law sec. 241-241a, at 524-525 (Lauterpacht ed., 1952).
203. Wright, "The Middle East Problem", 4 International Lawyer 364-367 (1970).
204. See Wright, supra note 150, at 270-271.
205. See Security Council Res. 242 (1967), reprinted in 1969 Senate Report, supra note 103, at 262-263.
206. See Security Council Res. 252 (1968), reprinted in Koch, supra note 64, at 38-39.
207. Wright, supra note 150, at 271.
208. Id. at 277.
209. Greenspan, supra note 114, at 217-218.
210. McDougal, supra note 4, at 735-736.
211. Id. at 736.
212. Id. at 739.
213. Id. at 740.

214. Id.
215. Article 2 of each of the 1949 Geneva Conventions is identical, as are Articles 1 and 3.
216. 6 U.S.T. 3514-3515, 3694-3695.
217. Commentary III, Geneva Convention Relative to the Treatment of Prisoners of War, Geneva, International Committee of the Red Cross 19-20 (Pictet ed., 1960) (hereinafter cited as POW Commentary).
218. Id. at 22 and Commentary IV, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Geneva, International Committee of the Red Cross 20 (Pictet ed., 1960) (hereinafter cited as Civilians Commentary).
219. McDougal, supra note 4, at 534.
220. Smith, "The Geneva Prisoner of War Convention: An Appraisal", 42 N.Y.U.L. Rev. 880, 889 (1967). Professor Greenspan has written that the 1949 POW Convention "...applies to all armed conflict between parties to the convention, whether war has been declared or not and even if one of the parties refuses to recognize a state of war." Greenspan, supra note 114, at 97.
221. 2 Oppenheim, International Law sec. 56, at 167 (Lauterpacht ed., 1944).
222. POW Commentary, supra note 217, at 23 and Civilians Commentary, supra note 218, at 20 (emphasis added).
223. Shull, "Counterinsurgency and the Geneva Conventions - Some Practical Considerations", 3 International Lawyer 49, 50 (1968).
224. 6 U.S.T. 3318, 3518 (emphasis added).
225. 6 U.S.T. 3514-3515, 3694-3695.
226. 6 U.S.T. 3318, 3518.
227. 6 U.S.T. 3514-3515, 3694-3695.
228. Civilians Commentary, supra note 218, at 21.
229. McDougal, supra note 4, at 741.
230. 6 U.S.T. 3318, 3518 (emphasis added).
231. POW Commentary, supra note 217, at 26.

- 232. McDougal, supra note 4, at 114.
- 233. Id. at 113.
- 234. POW Commentary, supra note 217, at 14-15.
- 235. Note, "The Geneva Conventions of 1949: Application in the Vietnamese Conflict", 5 Va. J. International L. 243, 247 (1967) (footnotes omitted).
- 236. Esgain and Solf, "The 1949 Geneva Convention Relative to the Treatment of Prisoners of War: Its Principles, Innovations and Deficiencies", 41 N.C.L. Rev. 537, 538 (1963).
- 237. Civilians Commentary, supra note 218, at 18.
- 238. Id. at 21.
- 239. 6 U.S.T. 3318, 3518.
- 240. POW Commentary, supra note 217, at 18.
- 241. Id.
- 242. Id. at 28.
- 243. Id. at 38.
- 244. Id. at 34.
- 245. 2 Oppenheim, International Law sec. 56, at 167 (Lauterpacht ed., 1944) (emphasis added). See also The Law of Land Warfare, Department of the Army Field Manual, FM 27-10, at 7 (1956).
- 246. 2 Oppenheim, International Law sec. 59, at 173 (Lauterpacht ed., 1944) (emphasis added).
- 247. McDougal, supra note 4, at 534-535 (emphasis added).
- 248. Greenspan, supra note 114, at 619.
- 249. Id. at 622.
- 250. See sec. II supra.
- 251. McDougal, supra note 4, at 104 (footnote omitted)
- 252. See sec. II supra.
- 253. McDougal, supra note 4, at 106.
- 254. Id.

255. Id. at 114.
256. Id. at 113.
257. Article 3 is an example of an international standard which is binding whether or not certain participants in a coercion situation have agreed to apply its provisions. POW Commentary, supra note 217, at 37.
258. McDougal, supra note 4, at 106.
259. Id. at 113.
260. 6 U.S.T. 3318, 3518.
261. 6 U.S.T. 3318, 3320, 3518, 3520.
262. Civilians Commentary, supra note 218 at 34. See also, Draper, The Red Cross Conventions 15 (1958).
263. See Article 3 of the 1949 Geneva Conventions (emphasis added).
264. See POW Commentary, supra note 217, at 28-34 and Civilians Commentary, supra note 218, at 26-34.
265. Civilians Commentary, supra note 218, at 36 (emphasis added). See also POW Commentary, supra note 217, at 37.
266. Id.
267. Professor McDougal's definition. McDougal, supra note 4, at 106.
268. Article 3 of the 1949 Geneva Conventions.
269. The 1949 Geneva Conventions become operative between a High Contracting Party, in this case Israel, and a Power not a party, in this case the Palestinian people, "...if the latter accepts and applies the provisions thereof." Article 2, para. 3 of the 1949 Geneva Conventions.
270. See Security Council Res. 237 (1967) and 259 (1968) reprinted in Arab World, Dec. 1969-Jan. 1970, at 5, 8 and General Assembly Res. 2252 (ES-V) of July 4, 1967, reprinted in 1969 Senate Report, supra note 103, at 260-262.
271. Schechtman, Arab Terror, Blueprint for Political Murder 42-43 (1969).
272. Security Council Res. 237 (1967) of June 14, 1967, reprinted in Arab World, Dec. 1969 - Jan. 1970, at 5.

273. General Assembly Res. 2252 (ES-V) of July 4, 1967, reprinted in 1969 Senate Report, supra note 103, at 260-262.
274. Security Council Res. 259 (1968) of Sept. 27, 1968, reprinted in Arab World, Dec. 1969 - Jan. 1970, at 8.
275. 6 U.S.T. 3320.
276. POW Commentary, supra note 217, at 50.
277. See sec. IV supra.
278. Sharabi, supra note 73, at 8.
279. 6 U.S.T. 3320 (emphasis added).
280. Paragraphs (a) - (d) of Article 2 A, 1949 POW Convention, 6 U.S.T. 3320.
281. POW Commentary, supra note 217, at 54.
282. Kutner, " 'International' Due Process for Prisoners of War: The Need for a Special Tribunal of World Habeas Corpus", 21 U. Miami L. Rev. 721, 732 (1967).
283. McDougal, supra note 4, at 548-549 (footnotes omitted).
284. Id. at 84.
285. POW Commentary, supra note 217, at 57.
286. See sec. IV supra.
287. See sec. II supra.
288. Harkabi, supra note 8, at 35.
289. POW Commentary, supra note 217, at 57.
290. Id. n. 1.
291. Tekoah, Arab Terror Strategy, The Latest Phase of the 20 Year War, Israel Information Services 3 (May 1968) (hereinafter cited as Tekoah).
292. Harkabi, supra note 8, at 26, 27, 29.
293. Tekoah, supra note 291, at 9.
294. POW Commentary, supra note 217, at 58-59.
295. Id. at 59.

296. Id.
297. Id. at 60.
298. McDougal, supra note 4, at 558, 559.
299. POW Commentary, supra note 217, at 61.
300. Id.
301. See sec. II supra.
302. See Article 4 A(2), 1949 POW Convention, 6 U.S.T. 3320.
303. Hudson, supra note 69, at 298.
304. Time, June 29, 1970, at 29.
305. 6 U.S.T. 3320.
306. POW Commentary, supra note 217, at 51.
307. Id. at 52 (emphasis added).
308. Id.
309. Time, Jan. 26, 1970, at 26.
310. Life, Feb. 6, 1970, at 52.
311. See sec. II supra.
312. 6 U.S.T. 3320.
313. POW Commentary, supra note 217, at 61.
314. Id. at 63.
315. Id. at 62-63.
316. Id. at 63.
317. See Article 4 A(3), 1949 POW Convention, 6 U.S.T. 3320.
318. POW Commentary, supra note 217, at 63.
319. See Article 2 and the discussion in sec. IV supra.
320. Id.
321. POW Commentary, supra note 217, at 63.
322. See sec. II B supra.

- 323. Tekoah, supra note 291, at 3.
- 324. See sec. II B supra.
- 325. McDougal, supra note 4, at 86-87.
- 326. Civilians Commentary, supra note 218, at 46.
- 327. See 1949 Civilians Convention, Articles 35-46, 6 U.S.T. 3540-3546, which are applicable to enemy aliens within the territory of a party to the conflict and Articles 47-78, 6 U.S.T. 3548-3568, which are applicable to occupied territories.
- 328. See sec. III E and F supra.
- 329. Id.
- 330. See sec. III B supra.
- 331. See sec. IV supra.
- 332. Greenspan, supra note 114, at 217-218.
- 333. Id. at 215.
- 334. 6 U.S.T. 3548.
- 335. Civilians Commentary, supra note 218, at 275.
- 336. Id. at 276.
- 337. See the material cited in notes 1 and 6 supra.
- 338. Time, June 1, 1970, at 19.
- 339. Id.
- 340. POW Commentary, supra note 217, at 61.
- 341. Washington Post, Feb. 24, 1970, at A 1, col.1-3 and A 10, col. 3.
- 342. Time, June 22, 1970, at 22.
- 343. Time, June 15, 1970, at 30.
- 344. Washington Post, Feb. 27, 1970, at A 12, col. 2.
- 345. 6 U.S.T. 3540. See Time, June 29, 1970, at 29.
- 346. Time, June 1, 1970, at 19 and Washington Post, Feb. 25, 1970, at A 14, col. 7.

- 347. POW Commentary, supra note 217, at 15.
- 348. The Law of Land Warfare, Department of the Army Field Manual FM 27-10, at 28 (1956).
- 349. See N.Y. Times, Nov. 16, 1969, at 25, col. 1, Washington Post, Mar. 19, 1970, at A 23, col. 6-8 and Time, June 1, 1970, at 19.
- 350. See for example General Assembly Res. 2443 (XXIII) of December 19, 1968, reprinted in Arab World, Dec. 1969 - Jan. 1970, at 9.
- 351. See sec. III E supra.
- 352. See Article 47, 6 U.S.T. 3548 and the discussion in sec. III.
- 353. Article 53 allows for such destruction only when "... rendered absolutely necessary by military operations." 6 U.S.T. 3552.
- 354. 6 U.S.T. 3552.
- 355. 6 U.S.T. 3538, 3540.
- 356. Harkabi, supra note 8, at 26.
- 357. Washington Post, Nov. 9, 1969, at A 22, col. 7-8.
- 358. New York Times, Nov. 13, 1969, at 13, col. 2-3.
- 359. Washington Post, Nov. 13, 1969, at A 26, col. 3.
- 360. Id. col. 4.
- 361. New York Times, Nov. 16, 1969, at 25, col. 1.
- 362. Times of London, Oct. 28, 1969.
- 363. Id.
- 364. 6 U.S.T. 3548.
- 365. 6 U.S.T. 3536.
- 366. 6 U.S.T. 3538.
- 367. 6 U.S.T. 3520.
- 368. Id.
- 369. Civilians Commentary, supra note 218, at 45.

- 370. Greenspan, supra note 114, at 157 (footnotes omitted).
- 371. Civilians Commentary, supra note 218, at 46.
- 372. Id.
- 373. Id. at 46.
- 374. Greenspan, supra note 114, at 157, note 16.
- 375. See material cited in note 327 supra.
- 376. Articles 35-46, 6 U.S.T. 3540-3546.
- 377. 6 U.S.T. 3695.
- 378. Articles 47-78, 6 U.S.T. 3548 - 3568.
- 379. Civilians Commentary, supra note 218, at 46.
- 380. See sec. III E supra.
- 381. Id.
- 382. Articles 35-46, 6 U.S.T. 3540 - 3546.
- 383. 6 U.S.T. 3520.
- 384. Greenspan, supra note 114, at 157 (footnotes omitted).
- 385. Article 4, 6 U.S.T. 3520.
- 386. Civilians Commentary, supra note 218, at 50 and Draper, The Red Cross Conventions 52 (1958).
- 387. Civilians Commentary, supra note 218, at 51.
- 388. See Articles 79-141, 6 U.S.T. 3568-3612.
- 389. 1 Oppenheim, International Law 4 (Lauterpacht ed., 1952).
- 390. See Greenspan, supra note 114, at 96 and 156.

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